海上丝绸之路(泉州)
司法合作国际论坛
Maritime Silk Road (Quanzhou) International
Forum on Judicial Cooperation

Maritime Silk Road (Quanzhou) International Forum on Judicial Cooperation

Presentations

October 26 - 27, 2021

Quanzhou, China

CONTENTS

Deepening International Judicial Exchanges and Cooperation for Joint Contributions to the Bright Future of the "Belt and Road" Initiative

Zhou Qiang, Chief Justice, President of the Supreme People's Court of the People's Republic of China

Distinguished Presidents of Supreme Courts, Chief Justices,
Justices, judges,
Foreign diplomatic envoys to China and representatives of international organizations,
Guests, ladies and gentlemen, friends,

The profound "Belt and Road" Initiative (BRI) proposed by the Chinese President XI Jinping coincides with the historical trend of economic globalization, responds to the requirements of the transformation of the global governance system and conforms to the strong desire of the people all over the world for a better life. It not only provides new development opportunities for all countries around the globe, but also breaks new ground for the open development of China. This March, China adopted the "14th Five-Year Plan" and the Long-Range Objectives Through the Year 2035, which have made comprehensive layout for high-quality development of the BRI. Chinese courts resolutely uphold the XI Jinping Thought on Socialism with Chinese Characteristics for a New Era as the guidance, thoroughly carry out the XI Jinping Thoughts on Diplomacy and Rule of Law, continuously improve litigation rules, optimize dispute resolution mechanisms, enhance capacity for judicial service, deepen international exchanges and cooperation, foster a market-oriented, law-based and globalized business environment, and strive to provide robust judicial service and guarantee for the high-quality development of the BRI and the construction of a "community of a shared future for mankind".

First, we should be committed to equal protection. Fairness and justness are the lifeblood of judicial work. The Chinese courts equally and fairly protect legitimate rights and interests of all parties from home and abroad in accordance with law, ensure the equality of litigation status, application of law and legal liability among all market subjects, and spare no efforts to maintain a fair, orderly, unified and open order for market competition. We put emphasis on unifying adjudicative standards, issued judicial interpretations on cases concerning arrest and auction of ships, disputes over independent guarantee, the application of the *Foreign Investment Law*, and crew disputes. We timely issued guiding opinions on trial of civil cases concerning the COVID-19, some of which have been included by the United Nations Commission on International Trade Law. We attach importance to judicial protection for intellectual property rights, earnestly carry out the

spirits of the High-Level Conference on Intellectual Property for Countries along the Belt and Road, implement the "Joint Initiative on Strengthening IP Cooperation among Countries along the Belt and Road", severely punish IPR infringements, reinforce anti-monopoly and anti-unfair competition justice, and constantly optimize legal environment for scientific and technological innovation. We give full play to the exemplary role of the Financial Courts, standardize application of law in foreign-related financial disputes, implement the "Guiding Principles on Financing for the Belt and Road Initiative", and support joint contributions from multilateral mechanisms and financial institutions of all countries to investment and financing for the BRI. We hear cases of maritime affairs and maritime trade concerning port construction, shipping insurance, carriage of goods by sea and marine ecological protection, optimize judicial guarantee mechanism for sea-land combined transportation network, and serve the construction of a safe and efficient new sea-land economic corridor to promote vigorous development of international shipping and logistics. Going ahead, **the Chinese courts are ready to** join hands with all parties to continuously uphold the principle of equal protection, properly handle foreign-related cases under the BRI in accordance with law, firmly observe international treaties, respect international norms, perform international duties, jointly safeguard the macro environment for regional cooperation based on fairness and justness, integrity and faithfulness, harmony and mutual benefits, and cement the legal groundwork for high-quality construction of the BRI with concerted efforts.

Second, we should be committed to security assurance. Maritime cooperation is a crucial component of building the "21st Century Maritime Silk Road", and a maritime order based on peace, tranquility and win-win cooperation bears on the security and interests of all countries in the world. The Chinese courts attach great importance to creating a harmonious and stable social environment for the BRI, and properly hear criminal cases involving international investment, international trade, transnational finance, ports, shipping, warehousing and logistics, etc. in accordance with law. We deepen our judicial cooperation on criminal cases with BRI countries, seriously crack down on terrorist, ethnic separatist, and religious extremist forces, and severely punish transnational crimes such as piracy, drug trafficking, smuggling, money laundering, telecommunications fraud, cyber crimes, and human trafficking. We stick to the principle of "nulla poena sine lege (no penalty without law)", strictly follow the procedure of case handling, properly hold the standard of criminal case handling and the boundary between crime and non-crime, and make sure every case being handled can stand the test of law and history. By June 2021, China has reached about 170 treaties with 81 countries on extradition, judicial assistance, asset return, combating the "Three Evils" (i.e. terrorism, separatism and religious extremism), and the transfer of sentenced persons. The Supreme People's Court of P.R.C. was extensively engaged in negotiations and relevant work of the international treaties on judicial assistance, actively committed to work of international judicial assistance and international cooperation in the pursuit of fugitives and asset recovery against corruption. Going ahead, **the Chinese courts are ready to** join hands with all

parties to constantly deepen judicial cooperation on criminal cases, severely combat all illegal and criminal acts concerning the BRI, establish a judicial anti-terrorism mechanism, jointly safeguard sovereignty, security and development interests, and foster a secure and stable environment for the BRI.

Third, we should be committed to green development. Oceans nurture life, connect the world and promote development. Since the 18th National Congress of the Communist Party of China, President XI Jinping has put forward a series of new ideas, new visions and new strategies for ecological progress and environmental protection, which collectively form the XI Jinping Thought on Ecological Civilization. The Chinese courts thoroughly carry out the XI Jinping Thought on Ecological Civilization, take a sound ecological environment as the most universal welfare for people's livelihood, and defend the right of all people to live and develop in a healthy, comfortable and beautiful ecological environment by law. We adopt the strictest system and the strictest rule of law to protect the ecological environment, comprehensively leverage environmental protection bans, punitive compensation for environmental infringements and other systems, and intensify punishment for environmental pollution and ecological damage. We strengthen the specialization of environmental justice, set up specialized judicial bodies for cases of environment and resources, and conduct centralized and unified adjudication of criminal, civil and administrative cases concerning environment and resources across administrative regions. We hear cases of business restructuring, bankruptcy, etc. as a result of economic structure or energy policy adjustment or overcapacity, support development of industries of energy conservation, environmental protection, clean production and clean energy, and help achieve the carbon peak and carbon neutrality targets. In response to the construction of maritime ecological civilization, the Maritime Courts have properly heard a series of cases concerning marine environmental pollution such as the ConocoPhillips case by law to help build a green and sustainable marine ecological environment. Going ahead, **the Chinese courts are ready to** join hands with all parties to implement the "BRI Green Investment Principle", push forward the construction of the BRI Sustainable Urban Alliance, the BRI International Green Development Coalition and the BRI Environmental Big Data Platform, serve the construction of green infrastructure, green investment and green financing, facilitate orderly development and utilization of maritime resources, and enable people around the world to have access to green, safe and assured marine products, and clean sea and beach under the blue sky.

Fourth, we should be committed to extensive consultation, joint contribution and shared benefits. China firmly practices multilateralism, conforms to the principle of extensive consultation, joint contribution and shared benefits, and is committed to high-quality development of the BRI with concerted efforts. The Chinese courts fully respect voluntary choices of dispute settlement methods by parties from home and abroad, and support Alternative Dispute Resolution (ADR) such as mediation and arbitration. The Supreme People's Court of P.R.C. set up the First and Second International Commercial Courts in Shenzhen and Xi'an, respectively, established the

International Commercial Expert Committee, optimized a "one-stop" diversified dispute resolution (DDR) mechanism for international commercial disputes that integrates litigation, arbitration and mediation. We successively issued two opinions on providing judicial service and guarantee for the BRI, guided judicial practices concerning the BRI, and promoted mutual recognition and enforcement of judicial documents made by the BRI countries. Till now, the Supreme People's Court of P.R.C. has established friendly ties with the supreme judicial organs of more than 140 countries and regions across the world, signed more than 70 cooperative agreements or MOUs with foreign judicial organs and international organizations, and successfully invited more than 60 presidents of the supreme courts and chief justices of foreign countries to China, all showing that the international judicial cooperation is increasingly close. Going ahead, **the Chinese courts are ready** to join hands with all parties to further strengthen judicial exchanges and cooperation, optimize the case exchanging and sharing mechanism, the exchanging mechanism for application of law and the cooperative mechanism for judge training, etc., enhance mutual understanding and trust of each other's legal system, build a new-type platform for international judicial cooperation, and make joint contributions to building "a community of shared future for mankind".

Fifth, we should be committed to bringing convenience to the public through science and technology. Nowadays, the rapid development of modern technologies, such as 5G, big data, artificial intelligence, cloud computing and blockchain, has created dramatic opportunities for improving the judicial work. The Chinese courts take the initiative to adapt to the trend of the Internet era, vigorously enhance the construction of smart courts, and spare no efforts to provide intelligent and precise judicial service for the general public. **We probe into new models for the Internet-based justice**, carry out "online trial of online cases", and make instrumental explorations in areas of platform construction, litigation rules, technological application, network governance, etc. We have issued regulations on offering online case-filing service for cross-border litigants to provide efficient and convenient litigation service for Chinese and foreign litigants. We adopt online litigation rules, and are actively contributing the Chinese plan and Chinese wisdom to progress of global rule of law. **We have established a smart trial system**, facilitate synchronous generation of case files with the case and in-depth utilization of the files, and are engaged in R&D of the "Faxin" platform, which is an intelligent trail assistance system gathering legal statistics and resources to provide precise resource retrieval and intelligent information push service for judges, lawyers and the general public. **We have inaugurated a smart enforcement system**, and optimized a number of IT systems for property inspection and control, assessment and auction, credit punishment, entrusted enforcement, etc., to solve difficulties in enforcement by IT means. **We have launched a smart service system** focusing on areas of DDR, case registration and filing, case categorization, distribution, trial and ruling, trial assistance, petition involving litigation, etc., to promote the in-depth integration of IT and litigation service, and provide one-stop, one single online platform and once-only litigation service for the general public. We are popularizing the China Mobile Micro

Court, where litigants and judges can handle the litigation online through mobile phones. **We have set up the People's Court Big Data Management and Service Platform**, making it possible for gathering, managing, analyzing and serving of judicial information and resources of all courts nationwide, to provide robust support for scientific decision-making. Since the outbreak of the COVID-19, the people's courts, reliant on outcomes of the construction of smart courts, have heard various cases timely and efficiently via the Internet, and make sure that "trial and enforcement will never suspend, and fairness and justness will never halt". Going ahead, **the Chinese courts are ready** to join hands with all parties to continuously pursue development driven by innovation, let all countries benefit from the latest advances in science and technology, serve new technologies, new business forms and new models brought about by digitalized, the Internet-based and intelligent development by law, to enhance online connectivity and push forward the construction of the digital Silk Road.

Guests, ladies and gentlemen, friends,

The BRI originates in China but brings opportunities and outcomes to the whole world. We sincerely look forward to strengthening exchanges, mutual learning and judicial cooperation with all countries and international organizations under the Silk Road spirits of "peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit", and, through international cooperation under the BRI, jointly create more welfare for the people of all countries and contribute more wisdom and strength to building "a community of shared future for mankind"!

Cooperation and Reciprocity for Win-Win Results and Shared Benefits

—China's Practice and Proposals for Recognition and Enforcement of Foreign Civil and Commercial Judgments and Foreign Law Ascertainment

Tao Kaiyuan, Justice, Vice President of the Supreme People's Court of the People's Republic of China

Distinguished Chief Justices, Presidents of Supreme Courts,

Guests, ladies and gentlemen, friends,

Good afternoon!

It is a great honor to join all of you here in Quanzhou, the starting point of the Maritime Silk Road. With the progress of the Belt and Road Initiative and ever-increasing trade, economic, and personnel exchanges along the route, it has become a common challenge facing all judiciaries as for how to promote cross-border recognition and enforcement of civil and commercial judgments, strengthen judicial cooperation in foreign law ascertainment, resolve cross-border economic and trade disputes in fair and efficient manner, and create a law-based business environment. Now, please allow me to share with you my thoughts on this topic.

I. China's practice in international judicial cooperation in the recognition and enforcement of foreign judgments

In recent years, Chinese courts have adhered to the spirit of extensive consultation, joint contribution, and shared benefits. Our fulfillment of international treaty obligations, advocacy of the "presumption of reciprocity" principle, signing of multiple memorandums, and participation in the formulation of the *Hague Judgments Convention* have all effectively promoted international cooperation in judgment recognition and enforcement.

First, abiding by international treaty obligations. Currently, China has signed bilateral judicial assistance agreements involving civil and commercial matters with 39 countries, among which 38 have entered into force and 34 have stipulated conditions for the recognition and enforcement of judgments made by foreign courts[1]. Fully committed to their international treaty obligations, Chinese courts handled the applications for recognition and enforcement of judgments made by foreign courts according to law. From 2018 to 2020, courts across China handled a total of 1,301 applications for recognition and enforcement of civil and commercial judgments made by foreign courts, where 1,226 cases were concluded, 1,142 were recognized and enforced, involving

1 Matters concerning the recognition and enforcement of foreign civil and commercial judgments are not stipulated in agreements with Singapore, South Korea, Thailand and Belgium.

more than 30 countries.[2]

Second, advocating the "presumption of reciprocity" principle. A reasonably defined set of criteria for determining reciprocal relations is of great significance for promoting mutual recognition and enforcement of judgments between countries. In June 2015, the Supreme People's Court issued the *Several Opinions Regarding the Provision of Judicial Services and Guarantees by People's Courts for "Belt and Road Construction"*, which clearly stipulated that judicial assistance may be provided by Chinese courts to parties of other Belt and Road countries before they have concluded a judicial assistance agreement with China. In June 2017, the Nanning Statement was adopted at the China-ASEAN Justice Forum, which proposed the "presumption of reciprocity" principle, marking an effective and new development of the reciprocity principle in China's judicial practice. According to the principle of reciprocity, Chinese courts have successively recognized and enforced the commercial judgments made by courts in Singapore, the US and other countries. In turn, judgments made by Chinese courts were also recognized and enforced by courts in Germany, Singapore, the United States, and Israel, etc., creating a sound and healthy environment for cross-border judgement enforcement.

Third, promoting new practices of international cooperation. In August 2018, the Chief Justices of China and Singapore jointly signed the *Memorandum of Guidance on the Recognition and Enforcement of Money Judgments in Commercial Cases*. This was the first guiding memorandum on judgement recognition and enforcement signed by the Supreme People's Court of P.R.C., which constituted an innovative informal soft-law mechanism in addition to treaty conclusion. In July 2019, the *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* was passed at the Hague Conference on Private International Law as the world's first international instrument to comprehensively establish internationally harmonized rules for civil and commercial judgments. The Supreme People's Court has, for multiple occasions, sent senior judges to be engaged in the drafting and negotiation of the convention, playing a crucial role in the process.

II. China's practice in foreign law ascertainment

Accurate ascertainment and application of foreign laws is of great significance for handling foreign civil and commercial cases according to law and creating a law-based business environment. In recent years, Chinese courts have been continuously improving foreign law ascertainment mechanisms, mainly from the following 3 aspects:

First, broadening the channels for foreign law ascertainment. In 2018, the Supreme People's Court of P.R.C. issued the *Regulations on Several Issues Concerning the Establishment of International Commercial Courts*, which added the means of foreign law ascertainment by legal ascertainment service agencies and international commercial expert committees, and provided open-

2 The cases involved over 30 countries including the United Kingdom, the United States, Italy, Australia, Singapore, South Korea, Malaysia, and Myanmar. 5 cases were not recognized and enforced, and 79 cases were concluded by other means including withdrawal and rejection.

ended stipulation on other reasonable ascertainment means such as the Internet approach.

Second, creating a foreign law ascertainment platform. In November 2019, the Supreme People's Court of P.R.C. established a unified platform for foreign law ascertainment, which integrated resources from five domestic foreign law ascertainment agencies and 53 international commercial expert committee members from 25 countries. Such efforts contributed to the gradual improvement of the foreign law database and case library, a significant step forward in improving foreign law ascertainment mechanisms.

Third, exploring means to ascertain foreign laws. Courts in Beijing, Tianjin, Shanghai, Fujian, and Guangdong, etc., have been proactively ascertained and applied the foreign laws in hearing foreign civil and commercial cases, accumulating much valuable experience. Chongqing Liangjiang New Area (Free Trade Pilot Zone) Primary People's Court and the China-ASEAN Legal Research Center jointly issued the *Guidelines for Ascertainment Mechanisms of Laws of Countries along the New International Land-Sea Corridor* in order to solve the ascertainment difficulty with foreign laws.

III. China's proposals to promote international judicial cooperation in the recognition and enforcement of foreign judgments and foreign law ascertainment

In order to further promote international judicial cooperation in the recognition and enforcement of foreign judgments and foreign law ascertainment, I have three proposals to offer:

First, embrace openness and inclusiveness in judicial practice. This year marks the 20th anniversary of China's accession to the World Trade Organization. In face of a severely hit global economy by the COVID-19 pandemic, it is more pressing than ever for us to reaffirm multilateralism and enhance international cooperation. We **suggest** that courts of all participating countries should continue to pursue win-win cooperation, explore to establish extraterritorial law assistance and ascertainment mechanisms between the judiciaries of various countries, make full use of the international principle of comity to reduce parallel litigation, and explore judicial cooperation mechanisms that equally protect the judgment interests of parties in various countries, and provide judicial protections and guarantees in support of trade and investment liberalization and facilitation.

Second, broaden the applicable scope of the principle of reciprocity. We **suggest** that ways to establish reciprocal relations should be further broadened to encourage more courts of participating countries to sign memorandums and make reciprocal commitments through diplomatic channels. The presumption of reciprocity consensus should also be extended to cover more Belt and Road countries, so as to effectively promote mutual recognition and enforcement of judgments.

Third, strengthen information sharing among judiciaries. Stronger information sharing will provide the courts of various countries with a better understanding of judgment recognition and enforcement mechanisms of other countries, contributing to more efficient, reliable, accurate, convenient, and cheap foreign law ascertainment. We suggest that judiciaries of all participating countries explore to establish an online information exchange mechanism covering laws and cases,

strengthen foreign talent exchange, and provide faster and more convenient support for cross-border civil and commercial litigation.

Dear colleagues,

The ocean is vast because it admits numerous rivers. In face of increasing global challenges, judiciaries of various countries should strengthen international cooperation in judgement recognition and enforcement and foreign law ascertainment, and give prominence to the role of judiciaries in resolving cross-border disputes, building a law-based business environment, and proactively boosting economic prosperity, so as to jointly promote the reform and development of the global governance system!

Thanks for your attention!

Judicial Cooperation in the Recognition and Enforcement of Foreign Civil and Commercial Judgments and the Extraterritorial Law Ascertainment

Humberto Martins, President of the Superior Court of Justice of the Federative Republic of Brazil

Distinguished Presidents of Supreme Courts, Chief Justices,
Justices, judges,
Foreign diplomatic envoys to China and representatives of international organizations,
Guests, ladies and gentlemen, friends,

The profound "Belt and Road" Initiative (BRI) proposed by the Chinese President XI Jinping coincides with the historical trend of economic globalization, responds to the requirements of the transformation of the global governance system and conforms to the strong desire of the people all over the world for a better life. It not only provides new development opportunities for all countries around the globe, but also breaks new ground for the open development of China. This March, China adopted the "14th Five-Year Plan" and the Long-Range Objectives Through the Year 2035, which have made comprehensive layout for high-quality development of the BRI. Chinese courts resolutely uphold the XI Jinping Thought on Socialism with Chinese Characteristics for a New Era as the guidance, thoroughly carry out the XI Jinping Thoughts on Diplomacy and Rule of Law, continuously improve litigation rules, optimize dispute resolution mechanisms, enhance capacity for judicial service, deepen international exchanges and cooperation, foster a market-oriented, law-based and globalized business environment, and strive to provide robust judicial service and guarantee for the high-quality development of the BRI and the construction of a "community of a shared future for mankind".

First, we should be committed to equal protection. Fairness and justness are the lifeblood of judicial work. The Chinese courts equally and fairly protect legitimate rights and interests of all parties from home and abroad in accordance with law, ensure the equality of litigation status, application of law and legal liability among all market subjects, and spare no efforts to maintain a fair, orderly, unified and open order for market competition. We put emphasis on unifying adjudicative standards, issued judicial interpretations on cases concerning arrest and auction of ships, disputes over independent guarantee, the application of the Foreign Investment Law, and crew disputes. We timely issued guiding opinions on trial of civil cases concerning the COVID-19, some of which have been included by the United Nations Commission on International Trade Law. We attach importance to judicial protection for intellectual property rights, earnestly carry out the spirits of the High-Level Conference on Intellectual Property for Countries along the Belt and Road,

implement the “Joint Initiative on Strengthening IP Cooperation among Countries along the Belt and Road”, severely punish IPR infringements, reinforce anti-monopoly and anti-unfair competition justice, and constantly optimize legal environment for scientific and technological innovation. We give full play to the exemplary role of the Financial Courts, standardize application of law in foreign-related financial disputes, implement the “Guiding Principles on Financing for the Belt and Road Initiative”, and support joint contributions from multilateral mechanisms and financial institutions of all countries to investment and financing for the BRI. We hear cases of maritime affairs and maritime trade concerning port construction, shipping insurance, carriage of goods by sea and marine ecological protection, optimize judicial guarantee mechanism for sea-land combined transportation network, and serve the construction of a safe and efficient new sea-land economic corridor to promote vigorous development of international shipping and logistics. Going ahead, the Chinese courts are ready to join hands with all parties to continuously uphold the principle of equal protection, properly handle foreign-related cases under the BRI in accordance with law, firmly observe international treaties, respect international norms, perform international duties, jointly safeguard the macro environment for regional cooperation based on fairness and justness, integrity and faithfulness, harmony and mutual benefits, and cement the legal groundwork for high-quality construction of the BRI with concerted efforts.

Second, we should be committed to security assurance. Maritime cooperation is a crucial component of building the “21st Century Maritime Silk Road”, and a maritime order based on peace, tranquility and win-win cooperation bears on the security and interests of all countries in the world. The Chinese courts attach great importance to creating a harmonious and stable social environment for the BRI, and properly hear criminal cases involving international investment, international trade, transnational finance, ports, shipping, warehousing and logistics, etc. in accordance with law. We deepen our judicial cooperation on criminal cases with BRI countries, seriously crack down on terrorist, ethnic separatist, and religious extremist forces, and severely punish transnational crimes such as piracy, drug trafficking, smuggling, money laundering, telecommunications fraud, cyber crimes, and human trafficking. We stick to the principle of “nulla poena sine lege (no penalty without law)”, strictly follow the procedure of case handling, properly hold the standard of criminal case handling and the boundary between crime and non-crime, and make sure every case being handled can stand the test of law and history. By June 2021, China has reached about 170 treaties with 81 countries on extradition, judicial assistance, asset return, combating the “Three Evils” (i.e. terrorism, separatism and religious extremism), and the transfer of sentenced persons. The Supreme People’s Court of P.R.C. was extensively engaged in negotiations and relevant work of the international treaties on judicial assistance, actively committed to work of international judicial assistance and international cooperation in the pursuit of fugitives and asset recovery against corruption. Going ahead, the Chinese courts are ready to join hands with all parties to constantly deepen judicial cooperation on criminal cases, severely combat all illegal and

criminal acts concerning the BRI, establish a judicial anti-terrorism mechanism, jointly safeguard sovereignty, security and development interests, and foster a secure and stable environment for the BRI.

Third, we should be committed to green development. Oceans nurture life, connect the world and promote development. Since the 18th National Congress of the Communist Party of China, President XI Jinping has put forward a series of new ideas, new visions and new strategies for ecological progress and environmental protection, which collectively form the XI Jinping Thought on Ecological Civilization. The Chinese courts thoroughly carry out the XI Jinping Thought on Ecological Civilization, take a sound ecological environment as the most universal welfare for people's livelihood, and defend the right of all people to live and develop in a healthy, comfortable and beautiful ecological environment by law. We adopt the strictest system and the strictest rule of law to protect the ecological environment, comprehensively leverage environmental protection bans, punitive compensation for environmental infringements and other systems, and intensify punishment for environmental pollution and ecological damage. We strengthen the specialization of environmental justice, set up specialized judicial bodies for cases of environment and resources, and conduct centralized and unified adjudication of criminal, civil and administrative cases concerning environment and resources across administrative regions. We hear cases of business restructuring, bankruptcy, etc. as a result of economic structure or energy policy adjustment or overcapacity, support development of industries of energy conservation, environmental protection, clean production and clean energy, and help achieve the carbon peak and carbon neutrality targets. In response to the construction of maritime ecological civilization, the Maritime Courts have properly heard a series of cases concerning marine environmental pollution such as the Conoco Phillips case by law to help build a green and sustainable marine ecological environment. Going ahead, the Chinese courts are ready to join hands with all parties to implement the "BRI Green Investment Principle", push forward the construction of the BRI Sustainable Urban Alliance, the BRI International Green Development Coalition and the BRI Environmental Big Data Platform, serve the construction of green infrastructure, green investment and green financing, facilitate orderly development and utilization of maritime resources, and enable people around the world to have access to green, safe and assured marine products, and clean sea and beach under the blue sky.

Fourth, we should be committed to extensive consultation, joint contribution and shared benefits. China firmly practices multilateralism, conforms to the principle of extensive consultation, joint contribution and shared benefits, and is committed to high-quality development of the BRI with concerted efforts. The Chinese courts fully respect voluntary choices of dispute settlement methods by parties from home and abroad, and support Alternative Dispute Resolution (ADR) such as mediation and arbitration. The Supreme People's Court of P.R.C. set up the First and Second International Commercial Courts in Shenzhen and Xi'an, respectively, established the International Commercial Expert Committee, optimized a "one-stop" diversified dispute resolution

(DDR) mechanism for international commercial disputes that integrates litigation, arbitration and mediation. We successively issued two opinions on providing judicial service and guarantee for the BRI, guided judicial practices concerning the BRI, and promoted mutual recognition and enforcement of judicial documents made by the BRI countries. Till now, the Supreme People's Court of P.R.C. has established friendly ties with the supreme judicial organs of more than 140 countries and regions across the world, signed more than 70 cooperative agreements or MOUs with foreign judicial organs and international organizations, and successfully invited more than 60 presidents of the supreme courts and chief justices of foreign countries to China, all showing that the international judicial cooperation is increasingly close. Going ahead, the Chinese courts are ready to join hands with all parties to further strengthen judicial exchanges and cooperation, optimize the case exchanging and sharing mechanism, the exchanging mechanism for application of law and the cooperative mechanism for judge training, etc., enhance mutual understanding and trust of each other's legal system, build a new-type platform for international judicial cooperation, and make joint contributions to building "a community of shared future for mankind".

Fifth, we should be committed to bringing convenience to the public through science and technology. Nowadays, the rapid development of modern technologies, such as 5G, big data, artificial intelligence, cloud computing and blockchain, has created dramatic opportunities for improving the judicial work. The Chinese courts take the initiative to adapt to the trend of the Internet era, vigorously enhance the construction of smart courts, and spare no efforts to provide intelligent and precise judicial service for the general public. We probe into new models for the Internet-based justice, carry out "online trial of online cases", and make instrumental explorations in areas of platform construction, litigation rules, technological application, network governance, etc. We have issued regulations on offering online case-filing service for cross-border litigants to provide efficient and convenient litigation service for Chinese and foreign litigants. We adopt online litigation rules, and are actively contributing the Chinese plan and Chinese wisdom to progress of global rule of law. We have established a smart trial system, facilitate synchronous generation of case files with the case and in-depth utilization of the files, and are engaged in R&D of the "Faxin" platform, which is an intelligent trail assistance system gathering legal statistics and resources to provide precise resource retrieval and intelligent information push service for judges, lawyers and the general public. We have inaugurated a smart enforcement system, and optimized a number of IT systems for property inspection and control, assessment and auction, credit punishment, entrusted enforcement, etc., to solve difficulties in enforcement by IT means. We have launched a smart service system focusing on areas of DDR, case registration and filing, case categorization, distribution, trial and ruling, trial assistance, petition involving litigation, etc., to promote the in-depth integration of IT and litigation service, and provide one-stop, one single online platform and once-only litigation service for the general public. We are popularizing the China Mobile Micro Court, where litigants and judges can handle the litigation online through mobile phones. We

have set up the People's Court Big Data Management and Service Platform, making it possible for gathering, managing, analyzing and serving of judicial information and resources of all courts nationwide, to provide robust support for scientific decision-making. Since the outbreak of the COVID-19, the people's courts, reliant on outcomes of the construction of smart courts, have heard various cases timely and efficiently via the Internet, and make sure that "trial and enforcement will never suspend, and fairness and justness will never halt". Going ahead, the Chinese courts are ready to join hands with all parties to continuously pursue development driven by innovation, let all countries benefit from the latest advances in science and technology, serve new technologies, new business forms and new models brought about by digitalized, the Internet-based and intelligent development by law, to enhance online connectivity and push forward the construction of the digital Silk Road.

Guests, ladies and gentlemen, friends,

The BRI originates in China but brings opportunities and outcomes to the whole world. We sincerely look forward to strengthening exchanges, mutual learning and judicial cooperation with all countries and international organizations under the Silk Road spirits of "peace and cooperation, openness and inclusiveness, mutual learning and mutual benefit", and, through international cooperation under the BRI, jointly create more welfare for the people of all countries and contribute more wisdom and strength to building "a community of shared future for mankind"!

Execution of foreign judgments

Ismail Amrallah, Vice President of the Court of Cassation of the Arab Republic of Egypt

The Hague Judgments Convention

The Hague Judgments Convention, formally the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters is an international treaty concluded within the Hague Conference on Private International Law. It was concluded during 2019, but has not entered into force yet.

On 2 July 2019, the delegates of the 22nd Diplomatic Session of the HCCH signed the Final Act of, and thus adopted, the *2019 Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters*.

The signing of the Final Act took place during a ceremony in the Great Hall of Justice in the Peace Palace by the presence of the Minister of Foreign Affairs of the Kingdom of the Netherlands, his Excellency Mr.Stef Blok. The Minister emphasised that the new Convention: “enhances the legal certainty and predictability that is so important in international legal matters especially in international trade”.

The HCCH 2019 Judgments Convention is the 40th global instrument adopted by the HCCH since it became a permanent Organisation.

As of July 2021, the HCCH comprises 89 members, being 88 member states and one Regional Economic Integration Organisation (REIO), the European Union.

On 4/24/1961, the Arab Republic of Egypt acceded to the “Statute of the Hague Conference on Private International Law”

On December 3, 1978, the People’s Republic of China acceded to the “Statutes of the Hague Conference on Private International Law”

The definition of “judgment” in the Judgments Convention is, on the face of it, very wide, covering “any decision on the merits given by a court”, including both money and non-money judgments and costs rulings (where the underlying decision falls within the scope of the Judgments Convention).

However, not all judgments in the civil and commercial context are in scope:

There are subject matter exclusions relating to insolvency, the validity of companies and the decisions of their organs, intellectual property, privacy and certain antitrust matters. This means that judgments in these subject areas will not be subject to recognition and enforcement under the Judgments Convention.

Arbitration and related proceedings are excluded.

In addition, Interim measures of protection are not considered “judgments ”.

Judgments for damages that do not compensate a party for actual loss (eg judgments for exemplary or punitive damages) are not enforceable.

The judgment will only be recognised abroad if it has effect in the jurisdiction in which it was given (the state of origin) and will only be enforced abroad if it is enforceable in the state of origin.

The Judgments Convention will only apply to a judgment if, at the time the proceedings were instituted in the state of origin, the Judgments Convention had effect between the state of origin and the state in which recognition or enforcement is sought.

Jurisdictional requirement

A judgment must meet one of the jurisdictional requirements set out in (Article 5) of the Judgments Convention to be eligible for recognition or enforcement. There are some familiar concepts here relating to residency, consent to jurisdiction, place of performance of a contractual obligation and jurisdiction agreements. By way of example, a judgment will be eligible if:

The person against whom recognition is sought was habitually resident in the state of origin, was the claimant in the proceedings in the state of origin or consented to the jurisdiction of the courts of the state of origin during the course of the proceedings;

The judgment ruled on a contractual obligation and the court that gave the judgment was in the state of the place of performance of that obligation; or the judgment was from a court “designated in an agreement…other than an exclusive choice of court agreement” (provided the agreement was in writing or documented in writing or in another form that is subsequently accessible). Exclusive choice of court agreements are out of scope as the Hague Convention on Choice of Court Agreements covers these.

Scope to limit the application of the Judgments Convention

The Judgments Convention provides for a number of circumstances in which a Contracting State may make declarations that limit its application. For example, a state with a strong interest in not applying the Judgments Convention to a specific matter can declare that it will not apply the Judgments Convention to that matter. That declaration will have effect both in the relevant state itself while also in other Contracting States, who need not apply the Judgments Convention to judgments from the relevant state with regard to that matter.

A Contracting State can also refuse to have a reciprocal relationship with another Contracting State. It can do this by notifying the depositary that ratification by another state should not have the effect of establishing relations between them, in which case the Judgments Convention will have no effect as between those two Contracting States.

There are also provisions that make it clear that the Judgments Convention will not affect the application of other treaties where certain criteria allies, eg: where the treaty is concluded in question before the Judgments Convention.

Refuse recognition or enforcement

Where a judgment is on the face of it enforceable under the Judgments Convention, it must be recognised and enforced without any review of the merits.

There are only limited grounds in which recognition or enforcement can be refused. These grounds include where, broadly, there was improper notice of the proceedings, where the judgment was obtained by fraud or where recognition or enforcement would be manifestly incompatible with public policy. Enforcement might also be refused if the proceedings in the state of origin were contrary to an agreement to determine disputes in a different jurisdiction or, in certain cases, if the judgment is inconsistent with another judgment.

The impact of Judgments Convention have in practice

The Hague Conference has stated that the Judgments Convention should reduce costs, promote access to justice, facilitate multi-lateral trade and promote the better management of transaction and litigation risk. The Hague Conference is certainly optimistic about the Judgments Convention's potential impact, describing it as "a true game changer in international dispute resolution ".

The Judgments Convention certainly has the potential to meet these ambitious objectives and to be of real benefit to commercial parties involved in cross-border business:

It provides a simple route to recognition and enforcement without a merits review and subject to only limited grounds for refusal.

The Judgments Convention will only really be a "game changer", however, if ratification is sufficiently widespread and takes places relatively quickly. Fourteen years after the Hague Convention on Choice of Court Agreements was established only in the EU, Mexico, Montenegro and Singapore have ratified. Although awareness of the potential benefits of multilateral enforcement treaties has arguably increased since the Choice of Courts Convention was concluded, it is nevertheless likely to be some time before the Judgments Convention has enough signatories to have a real impact. It will be longer still before it comes close to rivalling the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, with its 159 contracting states. To date, only Uruguay has signed up to the Judgments Convention, and the position of other Hague Conference states in relation to ratification is unclear, so this is one to keep an eye on over the next few years. Of particular interest will be whether states that are now active in international trade but have historically not been parties to bilateral or multilateral enforcement treaties, choose to participate. The PRC will be one to watch .

This Convention contained four chapters:

CHAPTER I – SCOPE AND DEFINITIONS

CHAPTER II – RECOGNITION AND ENFORCEMENT

CHAPTER III – GENERAL CLAUSES

CHAPTER IV – FINAL CLAUSES

-CHAPTER I – SCOPE AND DEFINITIONS

This Convention shall apply to the recognition and enforcement of judgments in civil or commercial matters. It shall not extend in particular to revenue, customs or administrative matters. This Convention shall apply to the recognition and enforcement in one Contracting State of a judgment given by a court of another Contracting State.

This Convention shall not apply to the following matters:–

(a) The status and legal capacity of natural persons;

(b) Maintenance obligations;

(c) Other family law matters, including matrimonial property regimes and other rights or obligations arising out of marriage or similar relationships;

(d) Wills and succession;

(e) Insolvency, composition, resolution of financial institutions, and analogous matters;

(f) The carriage of passengers and goods;

(g) Transboundary marine pollution, marine pollution in areas beyond national jurisdiction, ship-source marine pollution, limitation of liability for maritime claims, and general average;

(h) Liability for nuclear damage;

(i) The validity, nullity, or dissolution of legal persons or associations of natural or legal persons, and the validity of decisions of their organs;

(j) The validity of entries in public registers;

(k) Defamation;

(l) Privacy;

(m) Intellectual property;

(n) Activities of armed forces, including the activities of their personnel in the exercise of their official duties;

(o) Law enforcement activities, including the activities of law enforcement personnel in the exercise of their official duties;

(p) Anti-trust (competition) matters, except, where the judgment is based on conduct that constitutes an anti-competitive agreement or concerted practice which is among actual or potential competitors to fix prices, make rigged bids, establish output restrictions or quotas, or divide markets by allocating customers, suppliers, territories or lines of commerce, and where such conduct and its effect both occurred in the State of origin.

(q) Sovereign debt restructuring through unilateral State measures.

-CHAPTER II – RECOGNITION AND ENFORCEMENT

(Article 4)

General provisions

1. A judgment given by a court of a Contracting State (State of origin) shall be recognised and

enforced in another Contracting State (requested State) in accordance with the provisions of this Chapter. Only on the grounds specified in this recognition or enforcement might be refused.

2. There shall be no review of the merits of the judgment in the requested State. There may only be such consideration as is necessary for the application of this Convention.

3. A judgment will be recognised only if it has effect in the State of origin, and shall be enforced only if it is enforceable in the State of origin.

4. Recognition or enforcement may be postponed or refused if the judgment referred to under paragraph 3 is the subject of review in the State of origin or if the time limit for seeking ordinary review has not expired. A refusal does not prevent a subsequent application for recognition or enforcement of the judgment.

The Civil and Commercial Procedures Law

The articles of the Civil and Commercial Procedures Law are applicable in the implementation of judgments issued in a foreign country, and who is its parties want to implement it in Egypt. so that the principle is to submit a request for the execution of judgments and orders issued in a foreign country to the Court of First Instance that is intended to be executed in its circuit, in the usual conditions for filing a case.

However, the treaties concluded between Egypt and other countries regarding the implementation of foreign judgments, orders and bonds.

- After its entry into force

- it is the applicable law in this regard, even if it conflicts with the provisions of the Procedures Law. Article 301 of the pleadings law.

1. Egypt's accession to the Agreement for the Execution of Judgments issued by the Council of the League of Arab States by Law No. 29 of 1954.

Egypt's accession to the 1958 New York Convention on the Judgments of Foreign Arbitrators and their implementation

Where the Court of Cassation establishes it: "Execution of a foreign judgment in Egypt is only after the order for its implementation. However a distinction must be made between the implementation of that foreign judgment in Egypt and between Validity of its authority It is not necessary to issue an execution order, Rather it is sufficient for the Egyptian court before which it is invoked". An authority with jurisdiction to issue it issued that it. In accordance with the rules of international jurisdiction contained in the law of this body, pursuant to Article 22 of the Egyptian Civil Code. According to the rules of the jurisdiction of private international law, and there is nothing in it that contradicts the public order in Egypt, and no enforceable judgment has been issued in Egypt on the same subject and between the same litigants. Whenever the Egyptian court verifies the fulfillment of these conditions, it should take into account the authority of the foreign judgment.

(Article 22: The law of the country in which the lawsuit is instituted or the

procedures are conducted shall apply to the rules of jurisdiction and all matters related to

procedures.)

(The text in Article 301 of the Pleadings Law, that applying the rules stipulated in the chapter on the implementation of foreign judgments, orders and bonds does not prejudice the provisions of treaties concluded and concluded between the Republic of Egypt and other countries - meaning that the treaty, after its entry into force, is the applicable law in this regard, even if it conflicts With the provisions of the aforementioned law)

Chapter IV **– Execution of Foreign Judgments, Orders and Official Documents**

Article 296 - Judgments and orders issued in a foreign country may be ordered to be executed under the same conditions stipulated in the law of that country for the implementation of Egyptian judgments and orders there.

Article 297 - The request for an order of execution shall be submitted to the Court of First Instance in whose circuit the execution is to be carried out, according to the usual procedures for filing a case

Article 298 - Execution may only be ordered after verification of the following:

1 - That the courts of the Republic are not competent in the dispute in which the judgment or order was issued, and that the foreign courts that issued it have jurisdiction in accordance with the rules of international judicial jurisdiction established in its law

2 - That the litigants in the case in which the judgment was issued have been summoned to appear and properly represented

3 - The judgment or order has the force of an order in accordance with the law of the court that issued it

4 - That the judgment or order does not conflict with a judgment or order previously issued by the courts of the Republic and does not include anything that contravenes public order or morals therein.

Article 299 the provisions of the previous articles shall apply to arbitrators' judgments issued in a foreign country. The judgment must be issue in a matter that may be arbitrated in accordance with the law of the Republic.

Article 300 - Official bonds issued in a foreign country may be ordered to be executed under the same conditions prescribed in the law of that country for the execution of official enforceable bonds issued in the Republic.

Execution judge who is to be executed within his jurisdiction

Execution may not be ordered except after investigation of the fulfillment of the conditions required for the formality of the bond and its enforceability in accordance with the law of the country in which it was made, and that it is free from what is contrary to public order or morals in the Republic.

Article 301 - Applying the rules stipulated in the previous articles does not prejudice the provisions of treaties concluded or concluded between the Republic and other countries in this

regard.

The Court of Cassation settled its judgements on:

1.Articles 296, 297, 298, 301 of the Civil and Commercial Procedures Law, stipulate that the principle is that the request for an order to execute judgments and orders issued in a foreign country should be submitted to the Court of First Instance in whose circuit the execution is intended. In the usual conditions, for filing a lawsuit, except that the legislator departed from this principle. In Article 301, pleadings in the event of a treaty, this means that the treaty, after its entry into force, will be the applicable law in this regard, even if it contradicts the provisions of the law referred to. International Trade Conference held in New York from 20 May to 10 June 1958, Resolution No. 171 of 1959 was issued regarding it and it became effective in Egypt as of 6/8/1959. Hence, it is one of the applicable laws of the state, even if it contradicts the provisions of the Procedures Law or any other law in Egypt.

(Appeal No. 282 of 89 Judicial Chambers of Commercial Courts of Cassation - Session 9/1/2020)

(Appeal No. 7348 of 89 Judicial Civil Chambers of the Court of Cassation - Session 24/12/2019)

2.Treaties between Egypt and other countries regarding the implementation of foreign judgments and bonds. Considered, after its entry into force, the applicable law in this regard. Even if it conflicts with the provisions of the pleadings law. So according to Article No. 25 of the Judicial Cooperation Agreement between Egypt and France ratified by Presidential Decree No. 331 of 1982. The court required to issue an order for the execution of a judgment shall not implement it whenever the dispute issued regarding this judgment is the subject of a dispute first raised between the litigants themselves and on the same subject in the country required to enforce the foreign judgment.

(Appeal No. 19276 of 88 Judicial Civil Circuits of the Court of Cassation - Session 23/12/2019)

3. Foreign judgments shall be implemented in accordance with the provisions of the Judgments Execution Agreement issued by the Council of the League of Arab States. After verifying that a competent authority in accordance with the law of the country in which it was issued the judgment, the litigants have been properly notified and a certificate from the competent authorities has been submitted that the judgment is final. (Implementation of the provisions adopted in the League of Arab States).

(Appeal No. 15207 of 79 Judicial Civil Circuits of the Court of Cassation - Session 11/4/2017)

4. When the foreign judgment was issued in relation to the status of persons definitively and by an authority with the authority to issue it, in accordance with its law and according to the rules of jurisdiction of private international law, And there is nothing in it that contradicts the public order in Egypt, as it is permissible to take it before the Egyptian courts, even if it has not given the executive

formula in Egypt, even if the condition of exchange is not available, As long as an enforceable ruling is not issued by the Egyptian courts in the same matter and between the litigants themselves.

(Appeal No. 4 of 25 Judicial Civil Circuits of the Court of Cassation - Session 12/1/ 1956)

5. The provisions of the Egyptian legislation with regard to the implementation of foreign judgments require verification of the issuance of the judgment by a competent judicial authority in accordance with the law of the country in which it was issued, and this is what is stipulated in Article 1/493 of the Code of Procedure, and Article 1/2 of the Agreement for the Execution of Judgments concluded between the countries of the Arab League On December 14, 1952.

(Appeal No. 232 of 29 Judicial Civil Circuits of the Court of Cassation - Session 2/7/1964)

6. The text in Article 296 of the Procedure Code indicates that the legislator adopted the principle of reciprocity or exchange, and accordingly, foreign judgments in Egypt should be treated in the same manner as Egyptian judgments in the foreign country that issued the judgment to be implemented in Egypt. In this regard, the legislator was satisfied with the legislative exchange and the diplomatic exchange, which is stipulated by a text in a treaty or agreement, was not required. The court must verify the availability of the legislative exchange clause on its own.

(Appeal No. 1136 of 54 Judicial Civil Circuits of the Court of Cassation - Session 28/11/1990)

Impact Assessment on The Accession by The European Union to The "Judgments Convention"

Eleni Nikolakopoulou, Judge of the Piraeus Court of Appeal of the Hellenic Republic

By Decision of 16th July 2021 of the European Council (COM/2021/388), European Union acceded to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, joining Uruguay, Ukraine and Israel, with a limited, targeted declaration excluding the recognition and enforcement by courts in the EU of third-country judgments which ruled on commercial leases (tenancies) of immovable property situated in the EU, which is fully in line with the EU acquis on this matter, namely the Brussels Ia Regulation (Regulation (EU) No 1215/2012). Pursuant to this Regulation, courts in the EU have exclusive jurisdiction to rule on these disputes.

The Judgments Convention, adopted under the auspices of the Hague Conference on Private International Law ("HCCH"), has the potential to improve the current system of the circulation of foreign judgments. The Convention aims at promoting effective access to justice for all and facilitating rules-based multilateral trade and investment, and mobility, through judicial co-operation.

Currently, EU citizens and businesses seeking to have a judgment given in the EU recognized and enforced in a non-EU country, face a scattered legal landscape due to the absence of a comprehensive international framework for the recognition and enforcement of foreign judgments in civil and commercial matters. This means that the judgment creditors have to navigate through a patchwork of national laws of non-EU countries on the acceptance of foreign judgments, as well as bilateral, regional and multilateral treaties in place. Therefore, to stand a chance that their judgment will be enforced, those engaging in international litigation have to invest resources, time and often external expertise to prepare a robust litigation strategy. This complexity, as well as the associated costs and legal uncertainty, are deterring factors which may cause businesses and citizens either to avoid court litigation and seek other forms of dispute resolution, give up on pursuing their claims, or decide not to engage in international dealings altogether. This, in turn, can have a negative impact on the willingness of EU businesses and citizens to engage in international trade and investment activities. In addition, because the enforcement of EU judgments in non-EU countries is uncertain, the right of access to justice of EU businesses and citizens is hampered.

The EU has always been supportive of creating a multilateral system for the recognition and enforcement of judgments in civil or commercial matters and was thus actively involved in the negotiation process of the Convention.

The EU accession to the Convention is in line with the Union's commitment to multilateralism in international relations and it is likely to encourage other countries and EU trading partners to join the Judgments Convention. Also is in line with the Union's policy aimed at increasing growth in international trade and foreign investment and the mobility of citizens around the world.

The objectives of this accession are to enhance access to justice for EU parties by facilitating the recognition and enforcement of judgments given by courts in the EU wherever the debtor happens to have assets, to increase legal certainty for businesses and citizens involved in international dealings, to decrease costs and length of proceedings in cross-border court litigation and allowing the recognition and enforcement of third-country judgments in the EU only where fundamental principles of EU law are respected and EU internal acquis on the same subject matter is not affected.

Acceding to an existing multilateral framework would be more efficient than entering into negotiations with non-EU States at a bilateral level. Besides the possibility to negotiate multilateral or bilateral conventions on recognition and enforcement of judgments is no longer available to the Member States because external competence in matters of international jurisdiction and recognition and enforcement of judgments in civil and commercial matters lies exclusively with the European Union.

Depending on how many States will adhere to the Convention, it would ensure a common legal framework to deal with third-country judgments wherever they come from. It would also ensure one common legal framework for EU businesses and citizens seeking recognition and enforcement of judgments given by the courts in the EU, in non-EU countries.

The direct benefits for EU citizens and businesses when attempting to have an EU judgment recognized and enforced in the key trading partners analyzed (Argentina, Australia, Brazil, Canada, China, South Korea, Japan, United States) are estimated to be between EUR 1.1 and 2.6 Million during the reference period 2022-2026. This has to do with a projected decrease of 10%-20% of costs related to the recognition and enforcement of EU judgments in third countries. In addition, the average length of proceedings is expected to decrease by between three to six months on average.

The judiciary would probably experience a slight increase in the number of cases in the reference period, but this increase will be offset by the expected decrease in the length of proceedings.

EU businesses will benefit from the increase in legal certainty and predictability in international dealings. These benefits are expected to be more prominent for SMEs than for large businesses because the latter tend to prefer arbitration rather than court litigation when trying to resolve an international legal dispute. To the extent that EU businesses are engaging in court litigation, they will benefit from improved access to justice because of the higher likelihood of recognition and enforcement of European judgments in third countries, but also from lower costs (between 10% and 20%) and shorter length of proceedings (between 3 to 6 months), which is expected to have a

positive effect on their willingness to engage in or expand international dealings.

The accession to the Convention may also improve the competitiveness of SMEs. This is so because the costs of international litigation and thus indirectly of doing business internationally will decrease, which will provide SMEs having their seat in the EU with a comparative advantage over businesses from countries that did not ratify the Convention. The accession is expected to also have a positive impact on international trade and investment.

By 2026 trade in goods and services as well as foreign direct investment with the selected third countries is expected to increase with figures of between 0.3% and 1.6%. In addition, the Convention may facilitate the recognition and enforcement of judgments where it is currently exceedingly difficult to have EU judgments enforced for the benefit of EU creditors, with the indirect effect of further promoting trade with such countries. These indirect impacts could ultimately translate into improved economic growth and job creation.

In view of all this, it is my firm belief that legal certainty will guarantee the establishment and evolution of the Maritime Silk Road.

Judicial cooperation in the recognition and enforcement of foreign civil and commercial judgments and the verification of extraterritorial law

Jeremy Poon Shiu-chor, Chief Judge of the High Court of the Hong Kong Special Administrative Region of the People's Republic of China

The Honourable Vice President Yang, distinguished judges and speakers, ladies and gentlemen,

I am honoured to join the panel of distinguished judges and speakers from twelve jurisdictions to discuss judicial cooperation and the recognition and enforcement of foreign civil and commercial judgments, and the verification of extraterritorial law. The discussion will no doubt bolster judicial cooperation among jurisdictions participating in the Maritime Silk Road Initiative.

In the interest of time, I will focus on the mechanisms for recognising and enforcing foreign civil judgments in the Hong Kong Special Administrative Region. I will also briefly mention the recent arrangements the HKSAR has made with the Mainland China in this regard, which has greatly expanded the scope of enforcement.

In Hong Kong, there are two regimes that govern the recognition and enforcement of foreign civil judgments: the common law regime and the statutory regime, including the Foreign Judgments (Reciprocal Enforcement) Ordinance.

The common law regime in Hong Kong is based on the rules derived from the case law on recognition and enforcement of foreign civil judgments. Those rules are underpinned by the dual notions of comity and reciprocity. The notion of comity refers to an association of nations for mutual benefit. It is an acknowledgement that the society of nations will work better if some foreign judgments are taken to create rights which supersede the underlying cause of action, and which may be directly enforced in countries where the defendant or his assets are found. Comity demands that Hong Kong courts enforce foreign judgments when certain criteria are met. This in turn connects with the notion of reciprocity – that Hong Kong courts enforce foreign judgments in return for foreign courts enforcing Hong Kong judgments.

Under the common law, where a foreign court with competent jurisdiction has determined that a certain sum is due from one person to another, a legal obligation is imposed upon the judgment debtor to pay that sum. The judgment creditor may bring a claim to enforce that obligation as a debt.

In order to be the subject of an action for enforcement in the Hong Kong court, a foreign judgment must be final and conclusive. It may be final and conclusive even though it is subject to an appeal.

The judgment sum must also be in the nature of a money award, that is, for the payment for a

debt or a definite sum of money, rather than an unliquidated sum or one that requires the judgment debtor to act in a particular way or to refrain from doing something. The Hong Kong court will not enforce a foreign decree for specific performance or certain types of foreign judgments such as judgments ordering the payment of taxes, fines or penalties because it would amount to enforcing another country's revenue or criminal law.

The foreign court must have had jurisdiction, according to Hong Kong's rules of the conflict of law, to determine the subject matter of the dispute. Generally speaking, the foreign court would have had the required jurisdiction only where the person against whom the judgment was given:

was, at the time of the proceedings were commenced, present in the jurisdiction of that court; or

was a claimant, or counterclaimant, in the proceedings; or

submitted to the jurisdiction of that court; or

agreed, before commencement of the proceedings, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court.

Moreover, the proceedings must not be brought in contravention of an agreement under which the dispute in question was to be settled otherwise than by proceedings in the foreign court, unless the person against whom the judgment was given in such circumstances either agreed to the bringing of the proceedings or otherwise submitted to the jurisdiction of that court.

Where the above requirements are established to the satisfaction of the Hong Kong court, a foreign judgment may be challenged in the Hong Kong court only on limited grounds. These grounds include:

the judgment was obtained by fraud;

the judgment is contrary to the public policy of the Hong Kong in the sense that giving effect to it would violate the most basic notions of morality and justice; and

the proceedings were conducted in a manner which the Hong Kong court regards as contrary to the principles of natural justice.

Significantly, the Hong Kong court will not re-examine the merits of a foreign judgment. The judgment may not be challenged on the grounds that it contains an error of fact or law. A foreign judgment will be enforced on the basis that the judgment debtor has a legal obligation, recognized by the Hong Kong court, to satisfy that judgment. In terms of procedure, enforcement of a foreign judgment in Hong Kong is no different than other civil proceedings in Hong Kong – a writ is issued, accompanied by a statement of claim that provides the details of the judgment, the sum awarded by the judgment, and the aforementioned conditions that the plaintiff must satisfy for a foreign judgment to be prima facie enforceable. The writ for enforcement must be issued within 12 years after the date on which the foreign judgment became enforceable. If there are questions over particular aspects of foreign law in respect of the enforcement conditions as described above, for example, on finality, an expert opinion of the relevant foreign law will be required.

As to the statutory regime for enforcing foreign judgment, the Foreign Judgments (Reciprocal Enforcement) Ordinance applies to fifteen countries: Australia; Bermuda; Brunei; India; Malaysia; New Zealand; Singapore; Sri Lanka; Belgium; France; Germany; Italy; Austria; The Netherlands; and Israel. Only judgments rendered by superior courts are registrable under the Ordinance. Such superior courts are specifically listed in the Foreign Judgments (Reciprocal Enforcement) Order. The requirements in the Ordinance largely reflect those of the common law rules. If judgments from the superior courts of the aforementioned countries have been rendered, they must be enforced under the provisions of the Ordinance. They cannot be enforced by way of the common law route. The principal advantage the statutory regime offers is that if the conditions are satisfied, the foreign judgment is treated as a Hong Kong judgment on registration, and can be enforced as such. Since it is not necessary to issue a writ and to go through the ensuing procedure, enforcement under the Ordinance is relatively simple and straightforward.

I now turn to the enforcement of Mainland judgments in Hong Kong. Under the "one country, two systems" principle, the legal systems of the Mainland and the HKSAR are kept separate and distinct. As such, statutory provision is made for the recognition and enforcement of Mainland judgments in Hong Kong through the Mainland Judgments (Reciprocal Enforcement) Ordinance. The Ordinance sets out conditions for enforcement, which share similarities with the common law principles and Foreign Judgments (Reciprocal Enforcement) Ordinance.

In 2019, the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters was signed between the Supreme People's Court and the Government of the Hong Kong Special Administrative Region. It will supersede part of the previous arrangements for enforcement of Mainland judgments. The Arrangement offers many advantages. It is broader in scope so that it includes not only contractual matters, but also cases founded on tort, family and intellectual property law. It covers both monetary and non-monetary judgments. It also extends to judgments issued by different levels of court in the Mainland.

It is worth mentioning that the Arrangement is one of a series of such cross-border agreements that include the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the HKSAR (signed in 2019) and the Supplemental Arrangement Concerning Mutual Enforcement of Arbitral Awards between the Mainland and the HKSAR (signed in 2020).

These agreements for enforcing judgments and awards in the Mainland and Hong Kong enhance the attractiveness of Hong Kong as a forum for dispute resolution, whether by the courts or arbitration. Where parties are Chinese entities, these arrangements provide assurance that disputes, however resolved, will be enforceable where, for example, assets are located on the Mainland. Moreover, this enables parties to arbitrations seated in Hong Kong or the Mainland to directly apply for interim measures in both Hong Kong and the Mainland. This in turn strengthens Hong Kong as a place for dispute resolution, and at the same time adds to Hong Kong's unique standing – not only

as the only common law jurisdiction in China, but one in which arrangements have been made for recognition and enforcement of judgments in the civil law system in China.

To conclude, I would like to return to the notion of comity. As said, it is the foundation for recognition and enforcement of foreign judgments. But it surely has a much greater role to play. The mutual recognition of the judicial acts of courts from different jurisdictions for mutual benefit will definitely provide a solid basis for wider judicial cooperation of countries participating in the Maritime Silk Road Initiative. As this Forum shows, the spirit of comity, of mutual recognition, respect and consideration can lead to different jurisdictions, both civil and common law, irrespective of their divergent cultural, societal and legal background, working together to tackle issues and promote interests to the benefit of all.

It remains for me to thank our organisers today, and wish this Forum every success.

Judicial Cooperation in The Recognition and Enforcement of Foreign Civil And Commercial Judgments And The Extraterritorial Law Ascertainment

I Gusti Agung Sumanatha, Chairman of Civil Chamber of the Supreme Court of Republic of Indonesia

Honourable Chief Justice Zhou Qiang, Chief Justice of Supreme People's Court of China,
Honourable Chief Justices and Fellow Justices
Distinguishes Ladies and Gentlemen,

Good Morning/Day/Afternoon

I wish you all well and healthy

It is truly an honour for me to speak before this distinguished event of ***the International Forum on Judicial Cooperation hosted by Supreme People's Court of China,*** First of all, my Chief Justice, Chief Justice Syarifudin sends his highest regards to His Honor Chief Justice Zhou Qiang and Chinese judiciary for hosting this truly important event, and regret that he is unable to join this event himself, due to unavoidable task scheduled earlier. Secondly, it is also to my regret that I am unable to present physically in the venue with the rest of the participants, we regularly did in many previous SPC's events, albeit my strong preference to be with the rest of participants. Let us hope the solution to the pandemic can be invented very soon, and we can get together the old way.

Chief Justice,

Ladies and Gentlemen,

Recognition and Enforcement of Foreign Civil and Commercial Judgments and The Extraterritorial Law Ascertainment have been critical to enhance access to justice by reducing legal time frames, costs and risks in cross-border circumstances, which are all condition to promote international trade, and cross-border investment. I think many of us share my opinion, that we are living in this global era, where all governments have been working very hard to ensure that their jurisdiction is attractive enough for foreign investment, and therefore, pay a lot of attention to improve its compliance to various international instruments, as well as various Global Performance Indicators, such as World Bank's Ease of Doing Business Rank, Competitiveness Index, and so on, in a bid to give message to potential trading partners/investors that they can do faster, better, and cheaper, by among other things, appearing in the top leader board of those Global Performance Indicators.

Regarding enforcement of foreign court's judgment, at present, Indonesia still adheres to article 436 of the Indonesia Civil Procedure Regulation (*Reglement op de Rechtsvordering* / RV

State Gazette year 1847 No 52 jo. Year 1849 No 63), a regulation which was passed more than 150 years ago by colonial government, which says that basically it is not possible to directly enforce judgment of foreign court in Indonesia. Further, as of today, Indonesia is unfortunately still not a party to any treaty concerning reciprocal enforcement of court judgments, including the HCCH Conventions. In principle, foreign court judgments are not enforceable in Indonesia, and a new proceeding will need to be instituted in Indonesian court in order to obtain recognition. The foreign court judgment may be introduced as evidence in the new proceeding, but the Indonesian court will not be bound by the findings of the foreign court.

On the other hand, Indonesia is a party to the 1958 New York Convention of *Acknowledgement and Enforcement of Foreign Arbitral Award*, which allow award granted by International Arbitration to be carried out in Indonesia.

Our government is currently still working gradually to adopt the Private International Law Treaties series into our national law system. Earlier this year, our government has just ratified the Convention on Abolishing the Requirement of Legalization for Foreign Public Documents or known as (HCCH 1961 Apostille Convention) by Presidential Regulation Number 2 Year 2021 on the Ratification of the Convention on Abolishing The Requirement of Legalization for Foreign Public Documents, marking significant progress of Indonesian government's commitment to adopt private international law norms. I truly believe, that in the near future, other Private International Law Convention will gradually be ratified by our government. However, the question is in what pace the government will do that, and which conventions will be chosen and prioritized will be subject to political consideration, given the sheer number of conventions available for consideration.

Chief Justice,

Ladies and Gentlemen,

The topic of The Recognition and Enforcement of Foreign Civil And Commercial Judgments And The Extraterritorial Law Ascertainment as one of the issue stipulated under HCCH 2019 Judgments Convention, I believe can be considered still a way too advance topic for our consideration. Government must firstly agree to eliminate the barrier created by Article 436 old Procedural Code, before can move further on this issue.

Adoption of procedural law related convention, Indonesia government has strong commitment to promote international cooperation on Service Of Civil Process (HCCH 1965 Service Convention) and Taking of Evidence Abroad (HCCH 1970 Evidence Convention). The Supreme Court and our Ministry of Foreign Affairs have an improved procedure for rogatory process, which improve timeliness and reduce cost, and this procedure has been applicable since 2015, and in year 2020 only, serves no less than 2880 request coming in and out.

Indonesia uniquely has one bilateral Agreement in Judicial Cooperation which covers service in civil process and request to take evidence, signed in the year 1978 with the Kingdom of

Thailand.

Chief Justice,

Ladies and Gentlemen,

While political process is pending, I believe that to certain extent, Harmonization measures can also be attained by way of judicial cooperation. Having a harmonized rules of procedure to deal with foreign judgment, and provide mutual treatment to those having the similar rules can be one of temporary solution in absence of ratification of the formal convention. With ever growing judicial cooperation, and implementation of ICT in judiciaries worldwide, it is not impossible that certain group of judiciaries to come into an agreement on some mutual values that can be adopted in their procedural rules, on how to deal with foreign judgment on the basis of reciprocity.

In South East Asia region for example, under the frame of Council of ASEAN Chief Justices (CACJ), the ideal of harmonizing court internal rules on service of civil process and the process of taking evidence abroad has been discussed regularly with Federal Court of Malaysia leading the dialogue. While the result is still pending, the prospect of harmonizing rules by improving judicial cooperation seems to become more feasible, relevant and interesting, especially among judiciaries belong to same region.

Chief Justice,

Ladies and Gentlemen,

I would like to close my short remark with a statement, that while seems to be important, the regulation reform required to adopt principles encapsulated in the enforcement of foreign judgment treaties, will not be easy to deliver, as it may overlapped with the issue of sovereignty of the jurisdiction, and sometimes it is regarded as beyond the jurisdiction of the court to reach that far, therefore, while waiting for the time to come, I think, it is critical to firstly build common understanding and regular dialogue among the stakeholders, to share the same objectives, and agree upon the way to attain the goals. Judiciaries need to work even harder in the future to support this agenda.

Chief Justice,

Ladies and Gentlemen,

Thank you for your kind attention, have a great discussion ahead.

Current Situation and Prospects of the Recognition of Foreign Civil and Commercial Judgments in the Special Administrative Region of Macao

Sam Hou Fai, President of the Court of Final Appeal of the Macao Special Administrative Region of the People's Republic of China

Thank you, Moderator. Good afternoon, fellow Chief Justices. The title of my speech is "Current Situation and Prospects of Recognition of Foreign Civil and Commercial Judgments in the Special Administrative Region of Macao".

1. Under the Macao legal system, as in many other jurisdictions, the general system of recognition of foreign civil and commercial judgments is governed by civil procedure laws. The Civil Procedure Code of Macao provides for the special procedure of "review and confirmation of judicial decisions and arbitral awards outside Macao" in Articles 1199 to 1205. Article 1199 provides that:

"I. Unless regulated otherwise in an international convention applicable in Macao, in an agreement on judicial cooperation or in a special law, decisions on private rights rendered by courts or by arbitrators from outside Macao are only effective in Macao after being reviewed and confirmed.

II. If the aforesaid decision is relied upon purely as evidence in a case currently before the Macao court and the evidence shall be reviewed by the merits whereof the suit proceeded, such decision will not be subject to examination."

The legislator intends to establish by this Article a general rule that a special procedure is required to determine the validity of judicial decisions and arbitral awards in the field of private law made in a jurisdiction outside Macao in order that they may be effective and enforced in Macao.

Because of the particularity and complexity of this procedure, the legislators of Macao have delegated the relevant authority to the higher court, that is, the Intermediate Court to review and confirm[1], and the decision can be appealed to the Court of Final Appeal[2]. At the same time, in such cases, the case party shall entrust a lawyer[3].

Article 1199 is, of course, a supplementary provision. Before conducting an examination, the judge should first investigate whether there is any international treaty or agreement on mutual legal assistance signed between Macao and other regions that is applicable to the Special Administrative

1 Article 1203(3) of the Civil Procedure Code of Macau and Article 36 (12) of the Law on Judicial Organization Program.

2 Article 1205(1) of the Civil Procedure Code of Macau.

3 Article 74(1)(b) of the Civil Procedure Code of Macau.

Region of Macao[4]. If there are special or contrary provisions in the international treaty or agreement on mutual judicial assistance applicable to Macao, for example, where there are simpler review procedures or narrower conditions for refusal to recognize, or even automatic recognition and effective without review, the review procedures set forth in the Civil Procedure Code shall not apply[5].

By way of illustration, Macao and Mainland China signed the Arrangement on Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters between the Mainland and Macao SAR in February 2006, which regulated the mutual recognition and enforcement of judgments in civil and commercial cases between the two regions. Therefore, requests for recognition and enforcement filed after the Arrangement's entry into force shall be subject to the provisions of the Arrangement.

This is the only agreement on mutual judicial assistance in the recognition and enforcement of civil and commercial judgments concluded between Macao SAR and other jurisdictions to date.

With regard to the specific content of the review, based on the principle of the stability of international or inter-regional legal relations, the review and confirmation of foreign civil and commercial judgments in Macao mainly adopts a formal review system. In other words, the judge will not review the facts and legal issues of the case, but will only consider whether the judgment to be recognized meets certain formality requirements set out in Article 1200 (1)(a) to (e) of the Civil Procedure Code. They are:

1) There must be no doubts as to the authenticity of the document that contains the decision or as to the intelligibility of the decision by the judge; 2) the decision should have acquired res judicata force according to the laws of the other jurisdiction; 3) it was rendered by a court whose jurisdiction (competence) was not provoked by fraud to the law and does not concern a subject matter within the exclusive jurisdiction (competence) of the Macao courts; 4) the same case is not pending before a court in Macao (lis pendens) or has not been tried (res judicata) by a Macao court, except if it was first brought before the court from outside Macao (court in a different jurisdiction); 5) the respondent must have been properly summoned according to the law of the court of origin, and in the proceedings the principles of due process of law and equality of the parties have been observed.

Apart from these, there are only two circumstances in which the Macao courts are required to

4 For the supplementary nature of Article 1199 (1) of Civil Procedure Code of Macau, see Cândida da Silva Antunes Pires, Sobre a Eficácia em Macau de Sentenças Judiciais e Arbitrais do Exterior – A problemática da cooperação inter-regional ou uma cooperação inter-regional problemática?, Journal of the University of Macau School of Law, Issue 28, 2009, pp. 285-309. The author states, "Aliás, é o próprio n.º 1 do artigo 1199.º do CPC que, como disposição supletiva, ou residual, exige a averiguação prévia da eventual existência de convenção internacional sobre a matéria, aplicável na RAEM, ou de acordo no domínio da cooperação judiciária em que a RAEM seja parte."

5 WANG Hongyan, Study on Several Issues Concerning Inter-regional Civil and Commercial Judicial Assistance between Hong Kong, Macao and Taiwan, recorded in Academic Journal of One Country Two Systems, Issue 4 of 2014 (Issue 22 in total).

conduct substantive review of foreign judgments. In the first case, the judgments, if confirmed, will lead to results that are clearly incompatible with the public order of Macao[6]. The second situation is that the judgment to be affirmed is made against Macao residents, and according to the conflict rules in Macao, the relevant issues shall be resolved in accordance with the substantive law of Macao, which may lead to a judgment more favorable to Macao residents[7]. The former circumstance shall be reviewed ex officio by courts of Macao that accept the application for recognition of other jurisdiction's rulings. The latter circumstance shall be raised by the respondent in the defense.

2. According to statistics, since the return of Macao on December 20 1999 till now[8], the Intermediate Court of the Special Administrative Region of Macao have heard 577 cases concerning the review and confirmation of judgments rendered in other jurisdictions. Among them, the largest number of requests for confirmation of judgments are rendered in Mainland China, with a total of 264 cases, followed by Hong Kong, China (169 cases), Taiwan, China (23 cases), the United States (23 cases), Australia (21 cases), Portugal (14 cases), Canada (12 cases), Singapore (9 cases), the Philippines (8 cases), the United Kingdom (8 cases) and Vietnam (7 cases). In terms of the types of judgments to be confirmed, the largest number of judgments are related to marriage (e.g. divorce and the validity of marriage), with 449 cases, followed by judgments related to pecuniary disputes, with 82 cases, and the third place is taken by judgments related to inheritance and the distribution of estates, with 28 cases.

Of these 577 cases, the vast majority were confirmed.

Only 6 cases were not confirmed: one on the ground that the High Court of Hong Kong ordered a high litigation cost judgment in a workers' compensation case and it is obviously out of proportion to the amount of compensation claimed and finally received by the plaintiff, thus violating the public order in Macao in relation to the free exercise of the right to obtain judicial remedies by Macao residents[9]. In another case, the reason was that in a proceeding involving a monetary obligation before the High Court of Singapore, the Court did not summon a defendant who was then residing in Macao in accordance with the laws of Singapore[10]. As to the third one, it is because the letter of administration issued by the High Court of Hong Kong did not include the bank account opened by the deceased in Macao, and the confirmation of the letter of administration was of no practical

6 Article 1200(1)(f) of the Civil Procedure Code of Macau.

7 Article 1202 (2) of the Civil Procedure Code of Macau.

8 Statistics are as of 31 August 2021.

9 The Intermediate Court rendered the collegial judgment on Case No.393/2015 on December 6, 2018. The second respondent (the plaintiff to the work compensation case) requested and was supported by the Hong Kong court to get a compensation of HK$146,054.00; however, the second respondent was also ordered to pay a litigation fee of HK$1,071,377.00.

10 The Intermediate Court rendered the collegial judgment on Case No. 992/2017 on November 22, 2018. The party later appealed to the Court of Final Appeal, which through the collegial judgment on Case No.47/2019 on May 29, 2019, upheld the Intermediate Court's decision of non-confirmation.

use to the parties[11]. The fourth case was rejected because the judgment to be confirmed had not yet become definitive. The remaining two cases were rejected because the applicants did not submit complete judgment documents[12], which resulted in doubts as to the intelligibility of such judgments by the judges[13].

From these, we can see that in the recognition of foreign civil and commercial judgments, Macao implements unilateral and limited openness. The so-called "unilateral" means that reciprocity or equivalence is not the precondition for Macao to recognize other jurisdictions' civil and commercial judgments. Any party may directly apply to the Macao court for the recognition of other jurisdictions' civil and commercial judgments, no matter whether Macao and the place/country where the courts that rendered the judgments are located have signed mutual recognition agreements or not. The so-called "openness" means that the courts of Macao do not carry out substantive review of the civil and commercial judgments of other jurisdictions in accordance with local laws, but have an "open and tolerant" attitude towards the legal systems of other jurisdictions, give full respect and trust to the judicial organs and judgments of other jurisdictions, and only carry out formal review. The so-called "limited" means that non-local civil and commercial judgments must not infringe on the bottom line of Macao's legal system or violate the most basic values upheld by Macao society.

3. As an important starting point of the Maritime Silk Road, the Guangdong-Hong Kong-Macao Greater Bay Area, where Macao is located in, can reach important economic zones in the world to the west, east and south. It plays an irreplaceable role in the construction of the 21st Century Maritime Silk Road. Macao is well-developed in tourism and exhibition economy, and together with Hong Kong, formed the network closely linked to world economy in the long run.

With the further implementation of the Belt and Road Initiative, exchanges and cooperation in the political, economic, trade, cultural and other fields between Macao and countries and regions along the Maritime Silk Road will certainly be deepened in the future, and there will also be more and more transnational (cross-border) civil and commercial disputes and foreign-related litigation. Under such circumstances, if judicial decisions cannot be mutually recognized among the countries and regions along the Belt and Road, it will inevitably bring uncertainty to the settlement of international or inter-regional civil and commercial disputes and constitute an obstacle to the healthy development of the free flow of people and trade between Macao and these countries and regions.

Therefore, looking into the future, it is very necessary for Macao to enhance its cooperation with other countries and regions along the Belt and Road in respect of judicial assistance. For example, we can conclude bilateral or multilateral treaties on the mutual recognition and enforcement of court judgments with these countries and regions on the principle of mutual benefit

11 The collegial panel judgment on Case No.309/2011 of the Intermediate Court dated November 10, 2011.

12 The collegial panel judgment on Case No.774/2011 of the Intermediate Court dated July 18, 2013.

13 The judgment of the collegial panel on the Case No.29/2003 dated June 10, 2004 and the judgment of the collegial panel on the Case No.39/2008 dated July 16, 2009 of the Intermediate Court.

and reciprocity, thereby promoting integration and mutual trust between different jurisdictions. In the meantime, we may consider acceding to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters adopted at the Hague Conference on Private International Law held in Hague, Netherlands in July 2019, so as to eliminate the legal concerns of parties from countries and regions along the Belt and Road in commercial transactions with Macao, facilitate the resolution of disputes, enhance the overall business environment and international influence of Macao and even the Guangdong-Hong Kong-Macao Greater Bay Area, and provide strong judicial service and guarantee for the construction of the 21st Century Maritime Silk Road.

Thanks for your attention.

Judicial Cooperation in the Recognition and Enforcement of Foreign Civil and Commercial Judgments and the Extraterritorial Law Ascertainment

M'Hammede Abdenabaoui, First President of the Court of Cassation, President Delegate of the Supreme Council of the Judicial Power of the Kingdom of Morocco

H.E. The President of the Supreme People's Court; Distinguished Presidents and Guests, Ladies and Gentlemen,

I would like to start by thanking the People'sRepublic of China, represented by the President of the Supreme People's Court, for inviting the Kingdom of Morocco to participate in the International Maritime Silk Road Forum, which will discuss the "strengthening of judicial cooperation to promote a win-win development". An invitation that reveals the depth of the strong and distinguished relations between the two countries at several levels. A relationship supported by the leaders of both countries, as evidenced by the visit of His Majesty King Mohammed VI to Beijing in May 2016, which culminated in the signing of a Joint Declaration establishing a strategic partnership in many areas and also his Majesty's telephone communications with his excellency the President of the People's Republic of China

The excellent relations between the Kingdom of Morocco and the People's Republic of China culminated in the judicial field by the signing of an agreement between the two countries, which included judicial cooperation in the civil and commercial field signed in Rabat on 6 April 1996.

The Moroccan Court of Cassation understands that the initiative to organize this forum is of the utmost importance in strengthening judicial cooperation between countries in order to resolve some disputes that may arise from the realities of conflicts of foreign laws and the complications of their recognition and execution.

The naming of this International Scientific Forum the Maritime Silk Road and its inclusion in the People's Republic of China's efforts to revive an ancient economic market, as part of a major economic project known as the "Belt and Road", aimed at connecting China to the world through economic and commercial investments in infrastructure along the Silk Road, is a project that certainly requires support for judicial cooperation, and the establishment of legal bridges between the Belt and Road countries, in order to protect investment and trade, and inject effectiveness and efficiency into the enforcement of judgments and judicial decisions, as well as to gain familiarity with the legal systems of these countries and understand their procedures.

The opening of border between States by allowing the movement of foreign investment, goods and people calls necessarily for the need to strengthen judicial cooperation between them

in order to resolve the conflicts that may result from this reality.

The Kingdom of Morocco, an active member of the international community, has been for a long time a stake holder in all international initiatives aimed at strengthening rapprochement and cooperation among peoples. This position is illustrated by the extent of the agreements that bind it with a number of friendly and fraternal countries from all continents, especially in the field of judicial cooperation in the civil and commercial field that we are currently discussing. Consequently, Morocco is bound by bilateral conventions on judicial cooperation in the civil and commercial field with many Silk Road countries in Europe, North Africa, the Gulf, the Middle East, and some Asian countries.

It is also a member of several multilateral, regional and international agreements such as the Riyadh Arab Convention on Judicial Cooperation signed in Riyadh on 6 April 1983, which includes 21 Arab countries, the Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, recognition, execution and cooperation in the Field of Parental responsibility and procedures for the Protection of Children, which came into effect in Morocco in 2002, as well as the Hague Convention of 15 November 1965 concerning the Service of process of Judicial and Non- Judicial Documents in Civil and Commercial Matters Abroad, with entry into force in our country on November 1st 2011, both instruments adopted by a large number of countries.

It was not enough for Morocco to join these agreements, it also has a legislation that allows judicial cooperation in the field of the recognition of foreign judgments and their execution in Morocco, which extends even to countries with which the Kingdom does not have such conventions on the basis of the rules of justice, fairness, courtesy between States and reciprocity. These rules are established by international law as the basis for judicial cooperation between States.

In this regard, article 430 of the Moroccan code of Civil Procedure provides for the possibility of the execution of judgments pronounced by foreign courts by the Moroccan authorities after acquisition of the enforceable form by a Moroccan court, once it has confirmed the validity of the foreign judgment, its possession of the force of res judicata and the jurisdiction of the foreign court that rendered it. The Moroccan court must also ensure that none of its content violates Moroccan public order.

The Moroccan legislator went further, when he put in our legislation the possibility of the enforcement of contracts concluded abroad in Morocco. Article 432 of the Civil Procedure code stipulates that contracts concluded in another country before the competent, specialized officers and public officials abroad are enforceable in Morocco after having acquired the enforceable form in accordance with the conditions established by the Civil Procedure Code (procedures).

Needless to say, that the orientation of Moroccan law is similar to most contemporary systems of private international law which have subjected the enforcement of foreign judgments to special controls in the country of enforcement which ultimately results in the granting of the enforceable form.

In addition to the conditions of enforcement mentioned in Article 430 of the above-mentioned Civil Procedure Code, some judicial agreements contain specific provisions relating to the grant of the enforceable form which can be clarified as follows:

First: with regard to the jurisdiction of the foreign court which issued the judgment subject to enforcement

The court receiving the application for an order for the execution of a judgment must determine the jurisdiction of the foreign court that issued it. However, the question that must be raised in this regard concerns the determination of the law to be applied in determining the jurisdiction of the foreign court that rendered the judgment to be enforced.

Looking at the judicial agreements concluded in this regard, they are divided into two categories:

A.A category that stipulates that the international jurisdiction of the foreign court is determined in accordance with the rules of jurisdiction applicable in the country of enforcement (i.e. Morocco in our case), such as the Moroccan-French Convention of 1957, the Moroccan-Italian Convention of 1971, the Moroccan- Romanian Convention of 1972 and the Moroccan- Polish Convention of 1979...;

B.A category that stipulates that the international jurisdiction of the foreign court that pronounces the judgment to be enforced is determined under the rules in force in the country where the judgment was rendered, such as the Moroccan-Senegalese Convention of 1967, the Moroccan-Libyan Convention of 1962, the Moroccan-Kuwaiti Convention of 1996 and the Moroccan-Omani Convention of 2010.

Second: Regarding the validity of the foreign judgment

The validity of the foreign judgment lies in the fact that it is final and that the rights of the defense were respected. A foreign judgment is considered final when it acquires the force of res judicata and enforceability in the foreign country which rendered it. Hence, the party seeking enforcement of the foreign judgment in Morocco must submit a certificate confirming that the foreign judgment has become final and that it is not subject to any appeal. Respect for the rights of the defense is determined by ensuring that the foreign judgment is rendered in accordance with due process, respecting the guarantees of the rights of the defense, such as summoning the defendant and allowing him to choose his representative, and ensuring that he was served and had the opportunity to present his arguments and conclusions ...;

Third: With regard to the non-violation by the judgment of public policy

All the conventions have dealt with this condition, which is a fundamental condition for the acceptance of foreign judgments, which the court must control. “Public order” is defined by the jurists of private international law as “the set of cultural values, principles and political and legal ideas that prevail in the judge’s country, to which the application of a foreign law or a rule in

violation shocks the collective feeling of that country". And, Naturally, Public Order extends to public security, public morality, and the fundamental values of the country.

Fourth: Other conditions

In addition to these conditions, many agreements have added additional conditions that must be reviewed before granting the foreign judgment the enforceable form. Amongst These conditions we cite the following:

A.The foreign judgment cannot contradict a Moroccan judicial decision having the power of res judicata, rendered in the same case.

B.Moroccan courts should not have an ongoing case between the same litigants in the same subject brought before the referral to the foreign courts that handed down the judgment whose enforcement is sought. This is explained by the need to avoid two contradictory judgments and to respect the first choice to sue in one country, before the other.

C. The foreign judgment must not conflict with the principles of public international law. This requirement is dictated by the fact that the Moroccan judge cannot authorize the enforcement of a foreign judgment contrary to the principles of public international law. For example, a foreign judgment that arbitrarily stripped a person of his or her nationality.

In compliance with its international obligations, the Kingdom of Morocco stipulated in the preamble to its 2011 Constitution that international conventions duly ratified by it, within the framework of the provisions of the Constitution and the laws of the Kingdom, within respect of its immutable national identity, and on the publication of these conventions their primacy over the internal law of the country, and to harmonize in consequence the pertinent provisions of national legislation...

While Moroccan legislation has established a general framework that allows the enforcement of foreign civil and commercial judgments on its territory if the conditions are met, the jurisprudence of the Moroccan justice has a vast number of decisions enshrining the supremacy of international conventions and their primacy in the application over internal legislation in a good number of cases...

While Moroccan law allows the enforcement of foreign judicial decisions in civil and commercial matters on the territory of the Kingdom without establishing a ceiling, except for the conditions established by the above- mentioned Article 430, the Hague Convention of 2 July 2019 on the Recognition and Execution of Foreign Judgments in Civil and Commercial matters has excepted from its application a set of fields such as the status of persons, capacity, family law, bankruptcy and arbitration..., it has opened the door for contracting parties to declare that it will not apply in specific matters. As it gives the possibility of recognizing judgements resulting from bilateral, regional, or international agreements.

Consequently, we can say that the Kingdom of Morocco has a substantial battery of legal mechanisms, international and national, that strengthen its role in the international effort of

judicial cooperation, in particular with regard to the recognition and enforcement of foreign judgments in the civil and commercial arenas. Practical reality evidenced that these agreements are triggered by the Moroccan judiciary, in accordance with the provisions of the Constitution, that gave conventions preeminence over national law. This has led to the construction of an important and coherent case law that protects international conventions and strengthens international judicial cooperation. There is no room here to cite this case law due to the limited time allotted to this intervention.

Finally, I reiterate my thanks to His Excellency the President of the Supreme People's Court, and to all the organizers of this great scientific forum, and to the participants. I confirm, if confirmation is necessary, that the Moroccan justice believes in its mission to serve justice and prevent its limitation because of geographical or political boundaries between countries. It will remain a key player in all initiatives aimed at ensuring legal and judicial security and global and sustainable development for allthe peoples of the world, in accordance with the orientations of the Head of State, His Majesty King Mohammed VI, may God protect and assist him, and the principles of the Moroccan Constitution. With my greatest wishes for the success of the work of this forum.

Thank you!

Judicial Cooperation in The Recognition and Enforcement of Foreign Civil and Commercial Judgments and The Extraterritorial Law Ascertainment

Hassan Almohanadi, President of the Court of Cassation of the State of Qatar
(Not attended this Forum, but presented the text of the speech)

The general obligation of international judicial cooperation is to assist States to better promote and protect the role of law one of the major global objective of states and United Nation Charter itself.

Highlighting the fundamental importance of the rule of law, on 24 September 2012, the General Assembly concluded its first High-level Meeting on the Rule of Law by adopting a very important Declaration. For the first time, Member States agreed "all persons, institutions and entities, public and private, including the State itself, are accountable to just, fair and equitable laws and are entitled without any discrimination, to equal protection of the law".

The need to guarantee traders, commercial enterprises and corporations accesses to justice and remedies in cases of alleged violations of their rights of equal just and free trade on an extraterritorial fields is coming as a very relevant practice to the enforcement of the role of law.

It raises a number of practical issues relating to investigations, trial and sanctions across jurisdictions. To effectively investigate allegations of unfair trade and extraterritorial commercial laws' violations; it would not be feasible and even illogical to resort directly to trade sanctions and imposing squeezing hands measure, on the account of a potential viable judicial options to reach a win-win results.

Beyond State political cooperation; a complementary bilateral, territorial and international judicial cooperation are essential for the execution of civil judgments, and even criminal orders for forfeiture and the like.

There are some international instruments on bilateral legal assistance and judicial cooperation in the enforcement of foreign judgments that have been concluded in the framework of The Hague Conference on Private International Law, although none of these have entered into force. The 1971 Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, which provided that any judicial decision adopted by a Court of a Contracting State shall be entitled to recognition and enforcement in another Contracting State if the court issuing the decision has jurisdiction and if the judgment is final. The Convention has been ratified only by few countries.

Negotiations in 2001 led to the conclusion of The Hague Convention on Choice of Court Agreements. Under Article 8 of this Convention, a judgment given by a designated court of a

Contracting State shall be recognized and enforced in other Contracting States without any other review of the merits of the case and the judgment. This Convention only applies to civil and commercial matters, excluding, for instance, interim measures of protection from its purview. Currently, only Mexico has acceded to it.

Other international instruments contain obligations for States to cooperate with other States in the recognition and enforcement of judicial decisions and procedures. For example, the Convention on Civil Liability for Oil Pollution Damage (1969), replaced by the Protocol of 1992, provides that a final judgement in a contracting state shall be recognised in any other contracting state unless it was obtained by fraud or fair trial rules were not respected.

Having said that, it is clear that these instruments form a patchy framework for international cooperation in the investigation, prosecution and enforcement of judicial sentences are leaving no choice but to accounting on bilateral instruments to fill the gap taken as advantages to illicit parties regularly committing commercial extraterritorial law violations. However, bilateralism is not a comprehensive prescription for a solid run out from global trade crippling maters.

The current situation is in clear and pressing need of improvement to respond to the challenges of guaranteeing access to effective remedies for victims in business-related issues caused or contributed to by business enterprises. Under the foregoing and other bilateral territorial arrangements, some States have developed useful and effective practices that I may suggest to be considered as a basis for replication or adaptation. As an example; the six Arabian states of the Gulf under the umbrella of the Gulf Cooperation Council GCC has adopted and enforced “Agreement for the Execution of Judgments, Rogatories and Judicial Communiqués” 1997.

On behalf of the 6 states of the GCC, the state of Supreme Judiciary Council of the State Qatar is ready to share its experience with our colleagues of people’s Judiciary of China in this concern. Replicating our practice and adding some regional procedural applications here or there will for sure enrich the judicial recognition and enforcement of foreign civil and commercial judgments and the extraterritorial law ascertainment within the arrangements of the Belt and Road trade and commercial cooperation and will shorten the road towards excellence.

Finally, I take this advantage of being with to thank sincerely our peers in China for inviting us to share with our perspective towards what we can consider as the most venerable part of the global economic cooperation.

Thank you!

Judicial Cooperation in The Recognition and Enforcement of Foreign Civil and Commercial Judgments and Foreign Law Ascertainment

Sundaresh Menon, Chief Justice of Supreme Court of the Republic of Singapore

Chief Justice Zhou Qiang, President of the Supreme People's Court of the People's Republic of China,

Chief Justices, Justices, Judges and colleagues from all over the world,

Good afternoon. It is my pleasure today to speak on judicial cooperation in two contexts: the recognition and enforcement of foreign judgments and the ascertainment of foreign law; and to share our experience in Singapore in these areas.

Let me begin with judicial cooperation in the recognition and enforcement of foreign judgments. The current position in the transnational enforcement of court judgments is, unfortunately, fragmented and uneven across national borders. In general, different rules apply in different jurisdictions, and the principles for refusal of recognition or enforcement often entail the exercise of discretion in which the guiding principles are not always clear.[1] This is therefore an area in which constructive judicial cooperation can help bridge the differences. Let me outline three ways in which the Singapore judiciary believes it is possible to pursue judicial cooperation on this front.

The first, and perhaps most impactful way is pursuant to state accession to international treaties that regulate this issue. The Hague Convention on Choice of Court Agreements ("the Hague Convention"), which Singapore has signed and ratified, introduces much-needed certainty into the dispute resolution process in two ways: first, it facilitates the enforcement of exclusive choice of court agreements by providing that disputes shall be heard exclusively by the court stipulated in the choice of court agreement;[2] and second, it facilitates the recognition and enforcement of judgments of the chosen court by providing that such judgments shall be recognised in other Contracting States, subject only to limited defences defined in the Convention.[3] To date, the Hague Convention has been ratified by 32 Contracting Parties, including Singapore and the European Union.[4] China

1 This is not to say that the courts should not have any discretion at all to refuse enforcement; rather, the point is that an uncircumscribed and opaque discretion to refuse enforcement is anathema to commercial certainty, and to the successful party's entitlement to the fruits of litigation.

2 See Chapter II of the Hague Convention on Choice of Court Agreements. See also Part 2 of the Singapore Choice of Court Agreements Act 2016.

3 See Chapter III of the Hague Convention on Choice of Court Agreements. See also Part 3 of the Singapore Choice of Court Agreements Act 2016.

4 Hague Conference, "Convention of 30 June 2005 on Choice of Court Agreements, Status Table":https://www.hcch.net/en/instruments/conventions/status-table/?cid=98>.

and the United States are signatories, though they have not yet ratified the Convention.[5] Where states accede to such treaties, there is considerable scope for judiciaries to cooperate by coming to a convergent understanding of these treaties and developing a broadly common approach to their application.

But it can take considerable time for international treaties to achieve widespread acceptance and accession. So, the second avenue for judicial cooperation is by concluding non-binding instruments which can be very useful in providing greater clarity as to what the requirements are for the enforcement of a judgment in a particular jurisdiction. The Standing International Forum of Commercial Courts, of which Singapore is a founding member, has promulgated a Multilateral Memorandum on Enforcement, which describes simply and transparently how money judgments can be enforced in the nearly 40 jurisdictions that represent its contributing members, which include Singapore, China, Japan, the United Kingdom, as well as Abu Dhabi and Dubai.[6]

Besides such multilateral instruments, we have also pursued bilateral avenues of judicial cooperation, and have concluded eight memoranda of guidance ("MOGs") on the enforcement of money judgments with the courts of other jurisdictions.[7] These MOGs describe how a judgment of each court may be enforced in the other, and serve to provide clarity as to how such judgments are typically dealt with by the court and this in turn helps engender greater confidence in the enforceability of judgments issued by the Singapore courts and our bilateral partners in our respective jurisdictions.[8]

Third, beyond direct court-to-court cooperation, courts can also collaborate indirectly through their involvement in the work of regional and international legal institutes. The Asian Business Law Institute ("ABLI") is a good illustration of this sort of judicial cooperation. Led by a Board of Governors comprised of judges and other legal professionals from Australia, China, India and Singapore,[9] the ABLI aims to bridge the many differences that exist between Asian national

---

5 See Yeo Tiong Min, "Scope and Limits of Party Autonomy under the Hague Convention on Choice of Court Agreements", the 11th Yong Pung How Professorship of Law Lecture (16 May 2018): <https://ccla.smu.edu.sg/sites/cebcla.smu.edu.sg/files/Paper2018.pdf> noting that even before China had signed the Hague Convention, a court in Shanghai had taken guidance from the Convention in deciding to stay proceedings in favour of a court in Taiwan selected by the parties by applying a presumption of exclusivity to the choice of court clause before it (at p 4).

6 SIFoCC, "Multilateral Memorandum on Enforcement of Commercial Judgments for Money" (2ndedition):<https://s3-eu-west-2.amazonaws.com/sifocc-prod-storage-7f6qtyoj7wir/uploads/2021/04/6.7387_JO_Memorandum_on_Enforcement_2nd_Edition_April2021_WEB.pdf>.

7 For a list of MOGs on the enforcement of money judgments entered into by the Supreme Court of Singapore, see Supreme Court of Singapore, "Enforcement of Money Judgments": <https://www.supremecourt.gov.sg/publications/enforcement-of-money-judgments>.

8 See Supreme Court, "Press Release: Singapore and Rwanda Judiciaries Sign Memoranda of Understanding and Guidance to Enhance Judicial Cooperation and Enforce Money Judgments"(19April,2021):<https://www.supremecourt.gov.sg/news/media-eleases/press-release--singapore-and-rwanda-judiciaries-sign-memoranda-of-understanding-and-guidance-to-enhance-judicial-cooperation-and-enforce-money- judgments>.

9 ABLI, "Board of Governors": <https://abli.asia/ABOUT-US/BoardofGovernors>.

legal systems. One of its flagship projects focuses on the recognition and enforcement of foreign judgments in Asia. The project's first phase culminated in the publication of a compendium of reports providing a descriptive overview of the legal processes for recognition and enforcement in 15 Asian jurisdictions,[10] and its second, which lays the foundation for legal convergence, saw the compilation of a set of "Asian Principles for the Recognition and Enforcement of Foreign Judgments", which identifies several core principles common across key jurisdictions in the Asia-Pacific region, such as those relating to international jurisdiction, reciprocity and public policy, to name a few.[11]

I turn next to judicial cooperation in the ascertainment of foreign law. Distilling the content of foreign law can be challenging because it requires the court to pronounce on the law of a jurisdiction with which it may be somewhat unfamiliar. While enlisting the assistance of party-appointed experts on the foreign law can help, that process is often costly, protracted, and important aspects of the foreign law may not be properly understood due to unfamiliarity with the foundational concepts of a foreign legal system. [12] It goes without saying that the court best placed to adjudge the law of a particular jurisdiction will be a court of that jurisdiction, and there is, for this reason, real potential for judicial cooperation in this sphere.[13]

In the 2008 decision of the Singapore Court of Appeal in Westacre Investments Inc v The State-Owned Company Yugoimport SDPR,[14] one of the issues concerned the requirements under English law for a particular judgment to be enforceable in England. Faced with diametrically opposed opinions from the parties' English law experts, the court in Singapore adjourned the hearing and directed that the parties refer the issue to the English Court.[15] The English court's decision[16] was then

---

10 ABLI, "Recognition and Enforcement of Foreign Judgments in Asia" (December 2017):<https://abli.asia/publications/Recognition_and_Enforcement_of- Foreign_judgments_in_Asia>.

11 ABLI, "Asian Principles for the Recognition and Enforcement of Foreign Judgments":<https://info.sal.org.sg/abli/ebooks/recgonition-enforcement-foreign-judgments>.

12 See Justice PLG Brereton, "Proof of Foreign Law – Problems and Initiatives", address to the Sydney University Law School Symposium: The Future of Private International Law (16 May 2011): <classic.austlii.edu.au/au/journals/NSWJSchol/2011/13.pdf>, citing Spigelman CJ inMurakami v Wiryadi 268 ALR 377 at p 406, and further citing TM De Boer in "Facultative Choice of Law: the Procedural Status of Choice-of-Law, Rules and Foreign Law" (1996) 257 Rec d Cours 222, observing that "[m]ost judges dealing with foreign law in a conflicts case are unaccustomed to its vernacular, unaware of its various layers of meaning, insensitive to its subtleties, ignorant of its usage, oblivious to its context. Small wonder that they are apt to make mistakes that their colleagues abroad would avoid instinctively".

13 Judicial cooperation in this sphere dates back to as early as the 16th Century, when acourt in the Duchy of Brabant (in present day Belgium) sought an authoritative interpretation of a will according to English law from the Court of Common Pleas in England: see Chief Justice Spigelman, "Law and International Commerce; Between the Parochial and the Cosmopolitan", address at the New South Wales Bar Association (22 June 2010):<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1809444>.

14 Westacre Investments Inc v The State-Owned Company Yugoimport SDPR [2009] 2 SLR(R) 166 ("Westacre").

15 Westacre at [10]-[11].

16 Westacre Investments Inc v The State-Owned Company Yugoimport SDPR [2008] EWHC 801 (Comm).

considered by the Singapore court in deciding the case. We have since formalised this procedure in our Rules of Court[17] as well as in four memoranda of understanding concluded with the courts of Bermuda, Dubai, New South Wales and New York.[18]

Another way in which judicial cooperation can help in the resolution of questions of foreign law is by developing foreign law expertise within the court. International commercial courts, such as the Singapore International Commercial Court ("SICC"), often have panels of experienced judges from both common and civil law legal traditions. This enables the SICC to determine questions of foreign law on the basis of submissions instead of proof.[19] In a similar vein, the Supreme People's Court of the People's Republic of China benefits from foreign law expertise through its International Commercial Expert Committee – a panel of eminent and distinguished experts hailing from a host of different jurisdictions, including one of my colleagues on the bench of the Singapore Court of Appeal, Justice Steven Chong.[20]

It will be apparent from my brief remarks that there are many good and worthy instrumental reasons for pursuing judicial cooperation. This helps with efficiency in enforcement and accuracy in the ascertainment of foreign law, to name just two of the benefits. But there is yet a more fundamental reason why we should engage in such cooperation. For though we come from different jurisdictions – each with different legal traditions, processes and rules – we all stand in service of a common goal: the administration of justice. We are all stewards of the rule of law, not just in our own jurisdictions, but globally, and this requires that we work together, not alone. Forums like this afford us an excellent platform for the exchange of ideas and best practices.

It has been a pleasure to have had this opportunity to share the Singapore perspective with you.

Thank you very much.

---

17 See Order 101 on "Referrals on Issues of Law" in the Singapore Rules of Court.

18 Supreme Court of Singapore,"References of Questions of Law":<https://www.supremecourt.gov.sg/publications/references-of-questions-of-law>.

19 Singapore International Commercial Court, "SICCProceedings in General":<https://www.sicc.gov.sg/guide-to-the-sicc/sicc-proceedings-in-general>.

20 Supreme Court of Singapore, "Appointment of Justice Steven Chong as an Expert Member of the International Commercial Expert Committee" (9 December 2020): <https://www.supremecourt.gov.sg/news/media-releases/appointment-of-justice-steven- chong-as-an-expert-member-of-the-international-commercial-expert-committee>.

Judicial Cooperation in The Recognition and Enforcement of Foreign Judgments

Jayantha Jayasuriya, Chief Justice of the Democratic Socialist Republic of Sri Lanka

Your Excellency Mr Zhou Qiang, Chief Justice, President of the Supreme People's Court of the People's Republic of China, Your Excellencies the Chief Justices and other Justices, other officials, distinguished ladies and gentlemen,

The inalienable importance of an effective mechanism of administration of justice in every society need not be further elaborated or explained. Resolution of disputes among the members of a society in an acceptable and effective manner is a core factor in maintaining law and order in a society and building confidence in members of the society to engage in commercial and other activities with the fellow members of the society. One core feature in an effective mechanism of dispute resolution is the possibility of effective enforcement of the final decisions of the relevant organ. Existence of any obstacles in this process raises serious concerns on the effectiveness of any dispute resolution mechanism. Hence, effective enforcement of orders of any organ entrusted with the dispute resolution mechanism is a key factor that has an important effect on many matters in a society. People will desist from making use of any dispute resolution mechanism, which lacks an effective mechanism to give effect to and enforce its decisions. Existence, of such an ineffective dispute resolution mechanism is as same as not having any dispute resolution mechanism, at all. Any system operative within a particular country will therefore need to be focused on this issue, and ensure that the judgments of its courts can be enforced effectively.

Making provision to establish such an effective mechanism through the legislative process applicable within its own territory is not a major challenge to any country. However, establishing a process giving effect to enforcing judgments of one country in a different country involves many issues that need a closer examination. It is obvious that when a judgment of a different country needs to be enforced in a particular country it is the legal system in the latter that should make provision for the same. Therefore, the existence of different legal systems among the world community leads to a certain amount of unpredictability and an uncertainty, in this regard.

Under the English Common Law principles, initially the protection of rights acquired under a foreign system of law was given effect to on the ground of 'comity'. The main feature of the principle of comity was reciprocity. However, later the 'doctrine of obligation' superseded the doctrine of comity.

In Sri Lanka in the year 1921, the 'Reciprocal Enforcement of Judgments Ordinance' enabled the recognition and enforcement of money judgments obtained in a superior court in the United

Kingdom. Furthermore, the Minister is empowered to extend the application of the provisions of the Ordinance to judgments obtained in a superior court in any part of Her Majesty's Realm and Territories outside the United Kingdom. However, existence of 'reciprocal provisions' with such other territories is a factor that needs to be considered by the Honourable Minister in making such an Order extending the application of this Ordinance to any Territory outside the United Kingdom. Therefore, the applicability of the legislative scheme provided under this Ordinance is limited to a few countries, only. Hence when it comes to the enforcement of a judgment from a country outside these limited specified countries, reference will have to be made to the Roman Dutch Common Law principles as developed in South Africa. Time constraints would not permit me to set out in detail the applicability of Roman Dutch Common Law principles, in Sri Lanka. It is sufficient to mention that certain parts of Sri Lanka (then Ceylon) were governed by the Dutch, prior to the island becoming a colony under the British. During the said period, Roman Dutch Law principles were applicable in many matters and continued to be in operation even after the British took over the entire country. The other country in which Roman Dutch law principles are in operation is South Africa. Under the Roman Dutch Common Law in South Africa, the enforcement of foreign judgments is dependent on certain principles such as International Competence (where two factors such as 'residence' and 'submission' were key factors in 'money judgments'), Finality of Judgment, Public Policy and Fraud.

In the International sphere, years 1968, 1971, 1988, 2007 and 2019 bear important milestones in this regard.

In the year 1968, High Contracting Parties to the Treaty Establishing the European Economic Community adopted the "Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters" (Brussels Convention 1968). In the year 1971 The Hague Conference on International Law concluded "the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters" (First Hague Convention), in the year 1988 the then twelve members of the European Community and the then six members of the European Free Trade Association (Austria, Finland, Iceland, Norway, Sweden and Switzerland) became State Parties to 'Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil or Commercial Matters' (Lugano Convention 1988), in 2007 Swiss Confederation, members of the European Community, Denmark, Norway and Iceland had become signatories to the 'Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters' (Lugano Convention 2007) and in 2019 the Hague Conference on Private International Law concluded the "Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters" (2nd Hague Convention).

In the year 1992, two decades after the First Hague Convention was concluded, the Permanent Bureau, of the Hague Conference on Private International Law (HCCH) in its Preliminary Document No 17, while considering the proposal to'resume work in the field of recognition and enforcement of

judicial decisions with a view to preparing a single convention' observed - "With rapidly expanding commercial contracts worldwide (despite occasional regression), legal uncertainty, delays and costs caused by the absence of a general enforcement of judgments convention are likely to interfere increasingly with the needs of trade and business".

The validity and the importance of this observation in today's context – three decades from the time the observation was made – need not be emphasized. The growth in international commerce and trade achieved today covering almost the entire globe exemplifies the importance of a single legal framework around which all national players could rally around in this regard. Such a scenario would have a greater benefit when compared with the existence of bi-lateral or regional mechanisms. In fact, the proposal to commence work on a single convention had been made with the expectation that *'Hague Conference Member States and other countries might become parties'* to such Convention. It is salutary that the Hague Conference after a long journey of twenty-seven years, on 2 July 2019 had successfully concluded the "Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters" (Second Hague Convention). Tireless efforts and hard work of all those who were actively involved in this process should not only be acknowledged but commended too.

While expressing these sentiments, it is also important to note that, it remains in the hands of all countries to vigorously pursue towards ratifying or acceding to the Convention, if all countries are to see the success of all these efforts and benefit from this process. In this regard it is pertinent to observe that the first Hague Convention, which was concluded in 1971 by the year 2010 had five contracting parties only. Therefore, the success of creating such an international legal regime embraced by at least a fair number of countries if not all the countries, would depend on many factors. Therefore, the acceptance of the overall scheme provided under the Convention should be acceptable to an interested country, if such country is to become a party to it. 'Dualist Countries as opposed to 'Monist Countries', have the obligation of introducing necessary legislative schemes to ensure that the provisions in the Convention are made operative and applicable within its own domestic system.

In Sri Lanka it is noteworthy to make reference to the provisions in the Arbitration Act No 11 of 1995, in relation to recognition and enforcement of foreign Arbitral Awards. Section 33 of the said Act, makes provision to recognize and enforce a foreign arbitral award, irrespective of the country in which it was made, subject to specified grounds on which such an award can be set aside or an application to recognize and enforce can be refused. The legislative scheme provided by this Act in the domestic system is consistent with the provisions in the 'Convention on the Recognition and Enforcement of Foreign Arbitral Awards' (New York Arbitration Convention) that was concluded by the "United Nations Conference on International Commercial Arbitration" in the year 1958. By the month of May 2021, a total number of 168 countries had become State Parties to the said Convention. The recognition of the principles in the said Convention by a vast majority of countries

demonstrates the ***"win-win situation"*** among the contracting parties, as well as all the countries taken together as a single entity. The impact of the existence of such a successful international alternate dispute resolution mechanism on Transnational Commercial Activities need not be further elaborated.

While the individual actors whether State or Private, who are engaged in international commercial activities remain the primary beneficiaries from such mechanism, the entire society would benefit through the positive impact that would be created in the overall economy, of the particular country. A similar or perhaps, greater benefit can be achieved if there can be such a mechanism acceptable to the world community in relation to recognition and enforcement of foreign judgments in civil and commercial matters also.

Of course, at the same time, it is also pertinent to give our mind to the fact as to whether the existence of an effective alternate dispute resolution mechanism acceptable to a vast majority of the countries in relation to international commercial activities is also a factor that leads to slowing down the pace and lowering the interest in the journey towards establishing an internationally accepted mechanism in recognising and enforcing foreign judgments in civil and commercial matters.

These are few thoughts that I would share with this august assembly, to consider how our journey on judicial cooperation should be mapped out to the benefit of all interested stakeholders, equally.

Thank You!

Legal Issues of Marine Natural Resources and Ecology and Environment Protection

Vyacheslav M. Lebedev, Chief Justice of the Supreme Court of the Russian Federation

Your Excellency, Chief Justice Zhou Qiang,

Esteemed Forum participants,

Systemic measures aimed at protecting the marine environment and securing marine biological resources are implemented in the Russian Federation.

In accordance with the Marine Doctrine of the Russian Federation, approved by Decree of the Russian President of 26 July 2015, preservation of marine natural systems and rational use of their resources are among the main aims of the national maritime policy.

Over 1,000 normative legal acts regarding the rules of activities at sea have been adopted, including the Water Code of the Russian Federation and the Merchant Shipping Code of the Russian Federation.

Russian maritime legislation corresponds to the international standards in this sphere, as stipulated in the United Nations Convention on the Law of the Sea of 1982 and other international treaties.

The main principles of protection and preservation of the marine environment in Russia require ensuring biodiversity, eco-safety during works at sea, prohibition or limitation of economic activities which may harm the specially protected marine resources.

In this regard, the improper and unlawful use of waters is subject to termination in the judicial manner, and the burying of waste and other materials, discharge of pollutants in the internal sea waters and the territorial sea of the Russian Federation are prohibited.

Taking into account the unity of the ecosystem, in order to secure it, we should follow a complex approach to the protection of seas and influent freshwater, as well as of coastal strips.

In Russia, the broadest aquatic buffer zone is stipulated for sea waters: 500 metres from the high-water mark. Within this zone, it is prohibited to place production and consumption waste, conduct works with the use of harmful substances.

Russian courts take into account that it is only allowed to provide property rights to land plots located within the buffer zone if this is approved by the federal executive body authorised in the sphere of protection and use of the water fund.

In order to make restitution of damages caused to sea bodies more efficient, the owners of ships carrying hazardous and harmful substances are obliged to insure or provide other financial security against liability for harm to the marine environment, against expenses incurred by recovering the

sunken vessel from the seabed, towing and disposing of it.

Herewith, claims for restitution of damages may be stated directly against the underwriter or the organization that provided the financial security document.

A special statute of limitations has been stipulated for claims for restitution of damage caused due to carriage of hazardous and harmful substances by sea, which is 10 years from the day of the accident.

The courts proceed from the premise that the damage subject to restitution should include expenses on liquidation of the aftermath of pollution, restoration of normal functioning of the sea port and of the infrastructure of waterways.

If several ships cause damage to the marine environment, and it is impossible to ascertain the level of fault of each of them, the ship owners bear joint and several liability.

Pursuant to norms of international law, there is a procedure that limits the scope of property liability of the ship owner by creating the corresponding fund.

Under this procedure, judicial control is ensured by depositing the required monetary sum with the court in the amount stipulated by law, by providing a bank guarantee or other financial security that the court deems sufficient, as well as by placing the issue of distributing the fund into the exclusive competence of the court.

Preservation of resources of the sea bed and of submarine areas is ensured by protecting the continental shelf of the Russian Federation. In this regard, when installations, constructions and artificial islands are created or used, waste and other materials are buried at the continental shelf in violation of legislation and international treaties of the Russian Federation, these activities are to be halted or terminated in the judicial manner.

Cautious and rational use of marine biological resources contributes to harmonious interaction of humankind and nature. The courts take into account that persons engaged in fishing are not allowed to disrupt the habitat and perform unlawful acclimatization of species.

Illegally captured marine bio resources are subject to confiscation; herewith, some species are to be returned to their habitat, where this is possible.

For the purpose of special protection of anadroumous species of fish that migrate from fresh to sea waters, it is only allowed to catch them based on an approval of the corresponding regional commission.

Special conditions are provided for traditional fishing of indigenous small-numbered peoples of the North, Siberia and Far East of Russia, within the limits of quotas stipulated for them.

The courts pay particular attention to criminal cases on pollution of the marine environment, violation of legislation on the continental shelf and exclusive economic zone, illegal capture of water bio resources. 799 persons have been convicted for these crimes in the first half of this year.

The Russian Supreme Court has brought it to the attention of the courts that persons assisting in illegal capture of bio resources, in particular those who store or deal in them, are accessories in

crime and subject to criminal liability.

In the first half of this year, administrative punishments have been appointed for 313 persons for administrative violations pertaining to the use of sea waters.

The courts take into account the standing of the Russian Supreme Court that when a ship is confiscated during criminal proceedings or proceedings in a case regarding an administrative violation, the court should ascertain whether that vessel is the principal legal source of income for the citizen.

In these categories of cases, the courts also establish the circumstances contributing to violation of legislation on the use of sea waters and, where applicable, adopt special court decrees addressed to organizations, authorities and officials, thereby indicating concrete measures for the elimination of such circumstances.

Esteemed Forum participants,

I am convinced that the protection of the marine environment and biodiversity serves the common interests of our countries, and that harmonization of legal approaches in this sphere will contribute to achieving the goals of sustainable development.

Thank you for your attention!

Improving the Specialized Trial Mechanism and Protecting the Marine Ecological Environment

Liu Xiaoyun, Justice, President of Shanghai High People's Court of the People's Republic of China

Distinguished Chief Justices, Presidents of Supreme Courts,
Guests, ladies and gentlemen, friends,

Good afternoon, everyone! I am pleased to share with you my views on the "Legal Issues of Marine Natural Resources and Ecological Environmental Protection". China is a major maritime country, and has rich and diverse marine resources and a vibrant and developed marine economy. At the same time, however, land-based pollution and exploitation of marine resources bring great pressure on the marine ecological environment.

Maritime justice, as one of the important forces to protect the marine ecological environment, has actively explored and practiced ways of judicial protection of the marine ecological environment over the years, and built a powerful judicial defense line to protect the beautiful sea and blue sky. First, the supporting rule system for marine ecological environment protection is being improved constantly. In addition to the Constitution and laws, the Provisions on Several Issues Concerning the Trial of Cases of Compensation Disputes Arising from Maritime Natural Resource and Eco-Environment Damages issued by the Supreme People's Court (SPC) in 2018 clarified the nature and the claimant of such litigation, and improved the general rules and alternative methods of loss determination. In 2020, the revised Provisions of the Supreme People's Court on Several Issues Concerning Adjudicating Disputes of Compensation for Ship Oil Pollution Damages clarified the jurisdiction, limitation of liability, the defense of the insurer or the financial guarantor, the scope of compensation, etc. in such disputes. This fully reflects the spirit of strengthening protection of marine environment in international conventions such as the United Nations Convention on the Law of the Sea and the International Convention on Civil Liability for Oil Pollution Damage to which China is a Party, and has transformed the conventions into specific rule system of judicial protection of China's marine environment, providing a strong basis for the protection of the marine environment. The SPC has also actively promoted to establish a special chapter of "Ship Oil Pollution Damage" in the revision of the Maritime Code, so as to strengthen protection of the marine environment through legal system. Second, we have practiced specialized trials step by step. In 2016, Provisions of the Supreme People's Court on the Scope of Cases to be Accepted by Maritime Courts formally incorporated the civil cases on the development, utilization and environmental protection of the sea and navigable waters leading to the sea, and the administrative cases on the development and utilization of marine resources, fishery, environmental and ecological resource

protection into the scope of jurisdiction of the maritime courts. Furthermore, the SPC designated some maritime courts to conduct trials of jurisdiction over maritime criminal cases, and explored the "three trials in one" specialized trial model of civil, administrative, and criminal cases, enhancing the level of specialized trial of judicial protection of the marine environment. Third, we further improved the collaboration mechanism of judicial protection. To form joint forces for judicial protection of the marine environment, Shanghai, Nanjing, Ningbo and Xiamen Maritime Court have established a collaboration mechanism for the protection of marine resources and ecological environment in the East China Sea. Some maritime courts have explored to use the model of "separating adjudication from enforcement" in non-litigation enforcement. Through handling non-litigation enforcement cases, they provide legal support for the administrative authorities to impose administrative penalties on violations of marine environmental protection laws and regulations and on illegal acts of damaging the marine environment and ecological resources, with an aim to strengthen the protection of the marine ecological environment.

Shanghai is on the coast of the East China Sea and at the estuary of the Yangtze River. It not only possesses the unique natural conditions for shipping, but also gathers various shipping resources. Over the years, courts of Shanghai have made a series of innovative practices to provide judicial support for the marine environmental protection. First, we have built the model of specialized trial. The Shanghai Maritime Court has made continuous efforts to be more specialized in handling the marine environmental protection cases in its jurisdiction, such as forming a professional trial team on marine environmental protection, appointing expert people's assessors, engaging special consultants, setting up a directory of professional appraisal institutions, strengthening the data-push of similar cases through smart assistance and publishing reports on special trials, etc. Second, we innovated and improved the judicial connection and collaboration mechanism. The Shanghai Maritime Court has strengthened cooperation and coordination with relevant maritime authorities and built an integrated collaboration mechanism with effective connections to jointly protect the marine environment. For example, we established the Chinese Ship-source Oil Pollution Compensation Settlement Centre, and it properly handled China's first case of marine environmental pollution fund claim after establishment. The Center has helped improve the mechanism to operate orderly the Chinese Ship-source Oil Pollution Compensation Fund (COPC) and ensure the successful settlement of relevant incidents. We have also established an information sharing and communication and coordination mechanism with relevant administrative law enforcement authorities, invalidated the lease contract for reclaiming sea ponds without license, and legally and orderly removed the ships with no number, license or port of registry, in order to jointly maintain a good order for the marine environmental protection. Third, we have made full use of big data to support trials. The Shanghai Maritime Court developed the ship and cargo port big data analysis platform and uses it to realize the positioning and tracking, collision analysis, monitoring and early warning of ships in great support of finding facts in marine environmental

protection cases. For example, the ship track analysis function in the big data analysis system can monitor the illegal discharge of ships; based on the ship's AIS signal, the system can monitor the track of the ship which conducts illegal discharge, predict its berthing location, and check and arrest it in time; by analyzing the ship's abnormal stay, the system can provide data support for identifying environmental violations.

The sustainable development of the marine ecological environment requires more from judicial marine protection. Courts of Shanghai will forge ahead with innovation and embrace responsibility with passion, in order to provide more powerful judicial services and guarantees for the marine environmental protection. First, we will continue to innovate the specialized trial mechanism to provide judicial protection for the marine environment, further explore the "three trials in one" trial model and the practice of marine environmental public interest litigation, perfect the professional appraisal and expert consulting system, and improve the professional level of adjudication. Second, we will improve the marine environmental protection collaboration mechanism with the relevant maritime authorities and actively give play to the role of judicial suggestions, so as to strengthen the joint force of the marine environmental protection. Third, we will strengthen international judicial exchanges and cooperation, and conduct research on practical hotspots and difficult issues like the application of law, the distribution of burden of proof, the form of liability, etc. in the judicial protection of marine environment, so that we continuously improve our judicial professionalism in protecting the marine environment.

We share one ocean and one home. The countries along the "Belt and Road" together constitute a maritime community with a shared future. We are willing to work together with courts along the "Belt and Road", enhance mutual trust and cooperation, and contribute judicial wisdom to maintaining a good marine environment.

Thank you!

Legal Issues of Marine Natural Resources and Ecology and Environment Protection

Mandisa Muriel Maya, President of the Supreme Court of Appeal of the Republic of South Africa

Honourable Chief Justice Zhou Qiang

Esteemed Colleagues and representatives of the various participating courts

Distinguished guests

Good afternoon

My speech is a brief synopsis of the challenges and legal and judicial measures developed to protect marine ecology in South Africa.

1. Introduction

The marine and coastal resources of South Africa are an exceptionally rich and diverse national asset, which provides critical economic and social opportunities for the human population[1] and rank the country in the top three nations globally in this regard. [2]

However, increasing human and environmental pressure on these ecosystems has changed the functioning and structure of many of their components. Their uncontrolled or mismanaged use has led to overexploitation, degradation, resource loss and an overall decline in marine productivity. Climate change is also predicted increasingly to damage them.

2. Ecological Environment damage

comes in various forms. One is

2.1 Land-based sources of marine pollution

There is sufficient evidence that a large percentage of pollution in the oceans originates from sources on land.[3] Over 60 pipelines along South Africa's coast daily discharge about 800 million litres of household and industrial effluent into the sea. As a result, legislation[4] has been introduced with the objective, among others, to reduce the discharge of heavily contaminated waste water

1 The report by Statistics South Africa shows that 16 744 people were employed across the ocean fishing industry in 2019. Almost a quarter of the workforce are casual workers. The livelihoods of all these individuals, whether permanently or temporarily employed, depend on the sustainability of this precious resource.

2 South African National Biodiversity Institute National Biodiversity Assessment (2019).

3 For example, land use run-off from cultivated lands may contain phosphates and nitrates from fertilizers which, in moderate quantities, can be beneficial to the marine life, but in large quantities lead to plankton blooms and oxygen deficiencies when the plankton decomposes. Insecticides and pesticides also end up in the sea via rivers. Further, storm-water flowing into the sea from cities can contain all kinds of refuse, even metals from car exhausts and fumes.

4 Such as the National Water Act 36 of 1998 and the Integrated Coastal Management Act 24 of 2008.

produced by 'wet' off-loading of anchovies and to control marine pipeline discharges by requiring a permit[5] and the purification of effluent to a standard determined by the Minister of Water Affairs and Forestry. Further, the State has, in collaboration with the private sector and other stakeholders, developed a 'Source-to-Sea' initiative focusing on managing litter sources (primarily towns and cities located along rivers and waterways), which become pathways for the litter into the marine environment.

2.2Marine sources of pollution

are another major challenge. One is

2.2.1 Oil pollution

South Africa is situated on one of the world's busiest shipping routes and has experienced many oil spills in its oceans over the years, which resulted in extensive damage to the marine environment and to human society[6] in the form of oil-fouled beaches, dying seabirds and severe economic loss to fisheries, aquaculture and tourism.[7] It has, furthermore, been accepted in some cases that even establishments outside the areas directly affected by the oil spills could suffer economic loss therefrom.

Incidents of this nature prompted the proposal of the internationalisation of a civil liability regime for oil pollution damage,[8] when states affected by an unprecedented oil spill made it clear that individual states could not cope alone with these negative effects. Oil-spill contingency plans have been established for the South African coastline.[9] These plans indicate what should be done in each area in the event of an oil spill incident.

2.2.2 Plastic pollution

is another serious problem. Plastic which is easy to manufacture, relatively cheap, durable and light and is easily carried by wind and water from inland and other marine sources kills marine animals by entanglement, suffocation and starvation when it is eaten and also causes damage to boats. The impact of plastic pollution on South Africa's fresh and coastal water resources is becoming an increasingly prominent issue, with a number of recent studies highlighting the

5 Section 69 of the Water Act is aimed at regulating the discharge of effluent into the coastal waters from any source on land by requiring that such discharges are authorised under a permit or general authorisation.

6 Hui W Civil Liability for Marine Oil Pollution Damage Doctorate Thesis Erasmus University of Rotterdam (2010) 2.

7 Hui (n3) (2010) 2; Huang Recoverability of pure economic loss Germany 209-211.

8 The 1973 International Convention for the Prevention of Pollution From Ships, as modified by the Protocol of 1978 (MARPOL 73/78) to address pollution prevention, the 1969 Intervention Convention to deal with emergency response, the 1969 International Convention on Civil Liability for Oil Pollution Damage (1969 CLC), and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (1971 Fund convention) were enacted after the Torrey Canyon disaster, once it was clear that the international regime was not sufficient to deal with such an immense oil spill.

9 An oil spill contingency plan is a detailed oil spill response and removal plan that addresses controlling, containing, and recovering an oil discharge in quantities that may be harmful to navigable waters or adjoining shorelines.

magnitude of the impact and its distribution on South Africa's coastline and drinking water.

There is also the

2.2.3 Dumping from ships

In South Africa dumping of waste such as dredge spoils from harbour maintenance activities, sewage sludge, obsolete equipment and chemical waste, usually dumped from ships into the sea, is strictly controlled by the Dumping at Sea Control Act 73 of 1980.[10] Toxic substances such as mercury and cadmium may not be dumped at all and the dumping of arsenic, lead and copper is strictly controlled. Dumping sites situated in water deeper than 3 000m have been designated and no dumping is permitted outside these fixed areas.

3. The Effects of marine pollution

Although many of the effects of marine pollution are obvious, such as beach litter, oiling of sea birds, strangulation or entanglement of marine life, there are other equally devastating and long-lasting effects that are not as easily seen such as poisoning from toxic insecticides like DDT and Dieldrin, which do not dissolve in water, accumulate in the fatty tissues of animals and are passed up the food chain, for example, in female seals and dolphins, which pass these accumulated poisons through their milk to their offspring and fish-eating birds, such as pelicans and fish eagles, which can lead to the production of thin eggshells and the subsequent loss of chicks.

4. Marine Protected Areas

Another critical measure which South Africa has implemented is the creation of Marine Protected Areas and significant progress has been made towards increasing the total coverage of these zones, which are regulated by the National Environmental Management: Protected Areas Act 57 of 2003, [11] and play a vital role in maintaining biological diversity and ecosystem functioning by controlling activities in sensitive habitats, thus enabling the maintenance of fish stocks, the creation of new employment opportunities around tourism, the protection of the spiritual and cultural practices that connect many South Africans to the sea and the preservation of representative areas from development.[12] Several of the pieces of legislation, policies, and protocols that are used to govern South Africa's marine and coastal environment are either under review or have recently been revised to promote improvement.

---

10 The Act regulates the dumping of substances in the sea. Section 2 places restrictions on the loading or dumping of substances mentioned in Schedule 1 and 2 and dumping of substances in general. A special permit or a general permit authorizing dumping may be issued by the Secretary of Industries, who must consider the factors set out in Schedule 3. The Secretary may attach conditions to permits as he or she thinks fit.

11 An Act providing for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascapes; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; and for matters in connection therewith.

12 Attwood C G, Harris J M & Williams A. J 1997 'International experience of marine protected areas and their relevance to South Africa' South African Journal of Marine Science Vol 18 (1):311-332.

Innovative developments that have been made under the National Ocean and Coastal Information Management System are the Decision Support Tools, including the Integrated Vessel Tracking, which monitors inshore and offshore fishing vessels in South African waters and keeps track of their activities, the Harmful Algal Bloom monitor,[13] which helps avert adverse environmental and societal effects to the aquaculture industry and coastal economies,[14] and the Operations at Sea and Rescue Tools that feed satellite information collected by the South African National Space Agency to government departments and entities.

5. Applicable Legislation

South Africa has comprehensive laws, which have been tested and endorsed by the courts,[15] starting with the Constitution of the Republic of South Africa, 1996, which entrenches in section 24 of its Bill of Rights[16] a broad right to a healthy environment and enjoins the State to provide protection against any harmful conduct towards the environment, the National Environmental Management Act 107 of 1998, which is the principal environmental statute under South African law, and a wide range of domestic environmental legislation existing at all levels of government, which govern the manner in which government executes the environmental function and the courts exercise their judicial function in respect of environmental matters.[17]

---

13 Algal blooms are a natural phenomenon and are particularly common in the productive West Coast's Benguela upwelling region of South Africa and can lead to mass mortalities of entire marine communities, including mass walkouts of rock lobsters.

14 Department Forestry, Fisheries and the environment, Republic of South Africa; 15 October 2020.

15 For example, Gongqose and Others v Minister of Agriculture and Others [2018] ZASCA 87; [2018] 3 All SA 307 (SCA) in which the SCA held that the Marine Living Resources Act 18 of 1998 was not legislation that specifically dealt with customary law; that it did not extinguish the appellants' customary rights of access to and use of marine resources; and that its purposes of conservation and sustainable utilisation of marine resources were not inconsistent with the customary rights of the Dwesa-Cwebe communities which fished in a Marine Protected Area.

16 NEMA is a legislative measure contemplated by section 24(b) of the Constitution. Under section 24 which provides:
'Everyone has the right
(a) to an environment that is not harmful to their health or well-being; and
(b) to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that
(i) prevent pollution and ecological degradation;
(ii) promote conservation; and
(iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

17 For example, the Marine Spatial Planning Act 16 of 2018, the Integrated Coastal Management Act 24 of 2008 (ICM Act), the Maritime Zones Act 15 of 1994, the International Convention on Civil Liability for Oil Pollution Damage, 30 May 1996, the Marine Living Resources Act 18 of 1998, the Marine Pollution (Prevention of Pollution from Ships) Act 2 of 1986, the Marine Pollution (Intervention) Act 64 of 1987, the Sea Fisheries Act 12 of 1988 and the Sea Birds and Seals Protection Act 46 of 1973.

Conclusion

Finally, it cannot be overstated that the earth's resources are finite and diminishing. In view of the growing population, it is critical that a strong measure of caution be employed when planning to exploit those resources, especially where the effects and outcomes of that exploitation are uncertain,[18] to ensure that they are preserved and used sustainably for the benefit of everyone and future generations.

It is the world's collective responsibility to not only react to environmental crises when they happen, as this is far more expensive in more than just the pecuniary sense, than preventing it before it happens. Harm to the environment is often irreversible and, therefore, it is better to avoid it altogether than to try to remedy it later.

18 J Glazweski & L Plit 'Towards the application of the precautionary principle in South Africa law' (2015) 26 Stellenbosch Law Review 190 at 194.

Legal Issues of Marine Natural Resources and Ecology and Environment Protection

Michael W. Lodge, Secretary General of International Seabed Authority

Your Excellency, Mr Zhou Qiang, Chief Justice, President of the Supreme People's Court of China,

Distinguished speakers, guests and participants,

Ladies and gentlemen,

My very best wishes to you all from the International Seabed Authority in Kingston, Jamaica.

I regret that the continuing restrictions on international travel make it impossible for me to be with you all today, but I truly appreciate your kind invitation to participate in the Maritime Silk Road International Forum on Judicial Cooperation. I hope you will accept this short video intervention in lieu of my presence.

My comments today will focus on the importance of the rule of law for the sustainable management of marine mineral resources under the mandate of the International Seabed Authority.

The International Seabed Authority is one of three institutions established by the United Nations Convention on the Law of the Sea, which was adopted in 1982 and entered into force in 1994. The organization is thus 27 years old.

The core mandate of the organization is to regulate all activities of exploration for and exploitation of minerals from the deep seabed beyond national jurisdiction. According to the Convention, no State or entity may access this area without the consent of the Authority, expressed in the form of a contract. Every contract must be sponsored by a State party to the Convention.

This unique legal regime has been remarkably successful. The Authority has 168 members, all of which have accepted the provisions of the Convention. Since 1994, the Authority has approved a total of 31 exploration projects, including five exploration contracts with three entities sponsored by the Government of China. These include three contracts with China Mineral Resources Research and Development Association (COMRA), one with China Minmetals Corporation and one with Beijing Pioneer Hi-Tech Corporation. China, in fact, has more contracts than any other member State.

As the sponsoring State, China is obliged to ensure, within its legal system, that its contractors carry out their activities in conformity with the terms of their contracts and their obligations under the Convention and the rules, regulations and procedures of the Authority.

Critically, judicial interpretation of what this means in practice has been given by the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea, the judicial body created by the Convention.

In 2011, at the request of the Council of the Authority, the Chamber issued its advisory opinion concerning the responsibilities and obligations of States sponsoring persons and entities with respect to activities in the Area. In its opinion, the Chamber stated that the obligation of the sponsoring State to ensure compliance by sponsored contractors with the terms of the contract and the obligations set out in the Convention and related instruments is an obligation of "due diligence", which requires the sponsoring State to take appropriate measures within its legal system. These measures must consist of laws and regulations and administrative measures.

Further, the Chamber highlighted that sponsoring States have direct obligations independently of their obligation to ensure a certain conduct on the part of the sponsored contractors. These include the obligation to assist the Authority by taking all measures necessary to ensure such compliance, the obligation to apply a precautionary approach, the obligation to apply the best environmental practices, the obligation to adopt measures to ensure the provision of guarantees in the event of an emergency order by the Authority for protection of the marine environment, and the obligation to provide recourse for compensation.

The sponsoring State is also under a due diligence obligation to ensure compliance by the sponsored contractor with its obligation to conduct an environmental impact assessment.

Since the advisory opinion was delivered, I was pleased to note that China adopted its domestic law on exploration for and exploitation of resources in the deep seabed area in 2016. This is a positive sign of China's commitment to the rule of law in the ocean as well as to the implementation of the UN Convention on the Law of the Sea.

The next critical task for the International Seabed Authority is to adopt regulations governing exploitation for deep sea minerals.

We are well on the way to doing this. In 2019, the Authority's Legal and Technical Commission submitted draft regulations to the Council for consideration. This draft had been developed following an iterative process of development and stakeholder consultation that began in 2011.

The draft regulations consist of a total of 13 parts, 107 regulations, 10 annexes, four appendices and one schedule on use of terms and scope. They cover the entire process of mineral extraction from applications for approval of plans of work, the rights and obligations of the contractors, protection and preservation of the marine environment, inspection, compliance and enforcement, and settlement of disputes.

The Council must now review and ultimately adopt these regulations so that sponsoring States and contractors can move to the next phase of development of the resources of the Area. Since June 2021, added urgency has been given to this task, since a member State notified the Council of its intention to apply for approval of a plan of work for exploitation in the Area. In such circumstances, Section 1, paragraph 15 (b), of the annex to the 1994 Agreement requires the Council to complete the elaboration of the rules, regulations and procedures necessary to facilitate the approval of plans of work for exploitation in the Area within two years of the request.

In order to meet this timeline and to ensure that a robust and holistic regulatory framework is adopted by the Council by July 2023, it is clearly necessary for the Council to commit more time and financial resources to accelerate work on the draft regulations.

As China is a member of the Authority, the rules, regulations and procedures of the Authority, once adopted, shall be binding on China, as well as all other member States, and enforceable through domestic procedures.

I would like to encourage China to enhance its cooperation with other members of the Authority in implementation of the rules, regulations and procedures of the Authority, including sharing information on the development, interpretation and implementation of its national legislation concerning activities in the Area, and where appropriate, judicial cooperation.

To conclude my brief intervention, I would like to take this opportunity to express my appreciation to the Government of China for its valuable support to the work of the Authority. My best wishes for a successful Forum on Judicial Cooperation.

Development and Practice of Judicial Protection of Marine Ecological Environment

Gong Jiali, Justice, President of Guangdong High People's Court of the People's Republic of China

Distinguished Chief Justices, Presidents of Supreme Courts, Guests, ladies and gentlemen, friends,

China is a major maritime country. As early as 2000 years ago, China began to communicate with other countries in the world via sea routes. Guangzhou in the Sui and Tang Dynasties was a world-famous oriental port city, and the ocean route from Guangzhou to the Persian Gulf countries via the South China Sea and the Indian Ocean was the longest one in the world at that time. Today, in the 21st century, the Chinese courts are willing to provide the world with Chinese wisdom and solutions in many areas such as strengthening protection of marine resources and improving prevention and control of marine pollution.

I. General Introduction of China's Judicial Protection of Marine Environment

(1) Sources of marine environmental protection laws

According to the Constitution of People's Republic of China, the State protects and improves living and ecological environment, and prevents pollution and other public hazards. The promulgation and revision of the Environmental Protection Law and the Marine Environmental Protection Law have constituted China's basic legal system for protecting the marine environment. China has also joined more than ten international conventions, including the United Nations Convention on the Law of the Sea and the International Convention on Civil Liability for Oil Pollution Damage. These international conventions are also an important source of law for China's marine environmental protection.

In 2020, China promulgated the Civil Code. This Code provides environmental public interest litigation, punitive compensation for environmental damage and other systems, building a legal basis for Chinese courts to increase judicial protection of the marine environment.

In addition, the judicial interpretation of the Supreme People's Court of P.R.C. is also an important source of law. For example, the Provisions on Several Issues Concerning the Trial of Cases of Compensation Disputes Arising from Maritime Natural Resource and Eco-Environment Damages and Provisions of the Supreme People's Court on Several Issues Concerning Adjudicating Disputes of Compensation for Ship Oil Pollution Damages are important basis for the trial of marine environmental protection cases by courts across China.

(2) Coordination and collaboration for marine environmental protection

The government's marine environment supervision and management department and

procuratorial organs implement information sharing in collection of evidence, judicial appraisal for public welfare protection of the marine environment, etc. In addition to administrative penalties for acts that damage the marine environment, civil and criminal liabilities may also be investigated. In environmental public interest litigation, the government's marine environment supervision and management department can confirm the amount of compensation in marine ecological environment cases in a timely and effective manner based on evidence collected through multiple channels.

(3) Regional cooperation on marine environmental protection

The regional cooperation of courts in coastal areas of China has played an important role in marine environmental protection. Guangzhou, Haikou and Beihai Maritime Courts have established a cooperative mechanism for judicial protection of environmental resources in the "Beibu Gulf-Qiongzhou Strait" sea area; Dalian, Tianjin and Qingdao Maritime Courts have also built a cooperative mechanism for judicial protection of the ecological environment in the Bohai Sea. Guangdong, Hong Kong and Macao Courts are also exploring the establishment of an interregional judicial assistance mechanism for maritime disputes in the Guangdong-Hong Kong-Macao Greater Bay Area.

II. Practice of Judicial Protection of Marine Environment in China

(1) Marine environment civil litigation

China has established 11 maritime courts. Since 1984, a total of more than 5,000 cases of various civil disputes regarding marine environment have been heard.

In 1997, the Ocean Success's marine resource damage dispute was China's earliest marine environmental civil public interest litigation, and for the first time, Guangzhou Maritime Court confirmed the subject qualification of the government's marine environment supervision and management department in public interest litigation. In 2013, Guangzhou Maritime Court heard the case of the sinking of KENOS ATHENA.In order to prevent the leakage of 7,000 tons of sulfuric acid and 140 tons of fuel oil carried by the ship,timely preservation measures were taken so that money and time were gained for salvaging the sunken ship and major marine pollution incidents were avoided.

In recent years, Chinese courts have further improved marine environmental civil compensation system for marine ecological damage, ship pollution damage, etc. In 2019, Guangzhou Maritime Court determined the pollution cleanup and prevention fees by referring to the employment salvage remuneration, towage industry standards, etc. in the trial of Hao Jun pollution damage liability dispute case, and provided rules for the judgment of oil pollution accident claims. In 2019, Xiamen Maritime Court heard a dispute over liability for marine pollution damage from APL Los Angeles. The foreign ship owners paid compensation to the government marine environment supervision and management department and fishermen for damage to marine natural resources and ecological environment, and aquaculture facilities and income losses respectively.

(2) Marine environment administrative litigation

The contribution of maritime courts to the governance of the marine environment can be seen from the trial of administrative litigation cases. In recent years, the Chinese maritime courts have tried more than 1,000 administrative litigation cases involving marine environment, supported administrative agencies in increasing penalties for marine pollution in accordance with the law, and supported procuratorial organs in supervising administrative agencies to perform their management duties.

In 2017, in a marine environmental administrative penalty case, Guangzhou Maritime Court supported the administrative agency's penalty to a breeding company for illegal reclamation, with a fine of 16 times the sea area usage fee (a total of more than RMB 21.62 million).

In 2019, Haikou Maritime Court heard the first marine administrative public interest litigation case filed by the procuratorial agency and confirmed in accordance with the law that the government's marine environmental supervision and management department's failure to investigate and deal with illegal net equipment in the sea area constitutes a violation of the law, and ordered the performance of duties within a time limit.

(3) Marine environment criminal litigation

Giving play to the professional advantages of maritime courts to explore jurisdiction over criminal cases such as the pollution of marine environment, illegal sand mining at sea, and illegal harvesting of precious and endangered aquatic wildlife is a new trend in judicial protection of marine environment in China. Haikou Maritime Court, as a pilot court, heard a case of suspected illegal fishing of aquatic products in 2020. This case is of important demonstration significance for further strengthening the judicial protection of the marine environment. It also marks the initial formation of a "three-in-one" marine environment judicial protection system, which is, an integration of criminal, civil and administrative litigation in maritime courts.

III. Conclusion

In 2019, Chinese President Xi Jinping put forward an important concept of "A Marine Community with A Shared Future". China maintains that all countries in the world should jointly address global issues such as marine environmental protection.

The Chinese courts are willing to enhance exchanges and cooperation with judicial institutions around the world, and contribute more judicial wisdom and strength to global marine environmental protection and sustainable development.

Thank you.

International Recognition of Judicial Sale of Ships

Steven Chong, Justice of the Court of Appeal of Supreme Court of the Republic of Singapore

Introduction

Thank you for inviting me to speak on the international recognition of judicial sale of ships. I propose to first discuss the concept of judicial sale, followed by an overview of the approaches adopted by several leading maritime jurisdictions, and finally, some of the challenges and opportunities arising in this context.

The concept of judicial sale

I begin by discussing the concept of judicial sale. The concept of judicial sale of ships has a long and established pedigree, dating back as far as 1681.[1] Since then, it is common to find the concept of judicial sale of ships embedded within the process of diverse legal systems in some form or another. In most, if not all, of these jurisdictions, the fundamental premise is that judicial sale is uniquely capable of bringing about an important consequence – it confers clean title of the ship onto the purchaser.[2] This in turn has a significant bearing on the value of the ship. Maritime claims, particularly liens, are often "secret and invisible" – they attach to the ship, require no registration, and survive even the sale to a bona fide purchaser without notice.[3] Consequently, potential purchasers will often be unable to ascertain the number and value of potential claims against the ship,[4] which inevitably affects its price. The clean title conferred via judicial sale thus enables the ship to be sold at a higher price which, in turn, benefits maritime claimants by maximising the proceeds of sale from which their claims can be satisfied.[5]

The approaches of various jurisdictions

In order to fully appreciate the challenges arising from judicial sale of ships, it will be apposite to briefly survey the approaches adopted by some of the leading maritime jurisdictions. The survey will usefully set the stage to demonstrate the compelling need for harmonisation and international consensus as regards judicial sale of ships.

---

1 In France, the notion of judicial sale can be traced back to the Ordonnance de la Marine of 1681. On the other hand, there are English cases involving judicial sale which date all the way back to the early 19th century; see William Tetley QC, Maritime Liens and Claims (Business Law Communications Ltd, 1985) at pp 470–471.

2 William Tetley QC, Maritime Liens and Claims at pp 470–471.

3 D R Thomas, Maritime Liens (Stevens & Sons, 1980) at paras 1, 3.

4 The Trenton 4 F. 657 at p 663.

5 Maritime Liens and Claims at pp 467–468; The "Turtle Bay" [2013] 4 SLR 615 at [11]; The "Cerro Colorado" [1993] 1 Lloyd's Rep 58 at 61–62.

England

Under English law, the admiralty court may order a judicial sale after final judgment on the merits has been obtained, or prior to judgment, which is also referred to as a sale pendente lite. [6] The judicial sale is conducted by the Admiralty Marshal, who will first have the ship appraised. The ship's appraised value is confidential, and the Admiralty Marshall is generally not permitted to accept any bids less than the appraised value. The Admiralty Marshal must also advertise the sale and inform claimants of the sale. Judicial sale is most commonly conducted by private treaty – interested parties submit sealed bids and the ship is sold to the highest bidder. Upon payment of the purchase price, claimants can apply to the court for the payout of their claims and/or for a determination of priorities.[7] Under English law, the lex fori applies to classify and prioritise the claims. Thus, although a claim may be classified as a lien according to its lex causae, it may not be recognised as such under English law and will be treated as an ordinary claim.[8] Although there is a prima facie order of priorities,[9] the court retains a broad discretion to adjust it.[10]

Singapore

The position under Singapore law is substantially the same. The general method of sale is by public auction or private treaty, whereby interested parties tender sealed bids to the Sheriff.[11] The judicial sale process is fully administered and controlled by the Singapore court, in order to safeguard the propriety and integrity of the sale process and ultimately instil confidence in the judicial sale.[12]

China

I turn now to the position under Chinese law. Upon the approval of the Chinese maritime court, a ship may be sold by public auction conducted by an auction committee constituted by the court and subject to the court's supervision.[13] Interestingly, the Chinese court has even sold ships via the well-known consumer-to- consumer website Taobao.[14] Similar to England and Singapore, the court will determine a reserve price, which is not disclosed to the public.[15] As for priorities, after paying

---

6 Sarah C Derrington & James M Turner QC, The Law and Practice of Admiralty Matters (Oxford University Press, 2nd Ed, 2016) at para 7.55.

7 The Law and Practice of Admiralty Matters at para 7.63; Lief Bleyen, Judicial Sales of Ships: A Comparative Study (Springer, 2015) at pp 111–114.

8 Judicial Sales of Ships at p 114; The Colorado [1992] 13 Ll L Rep 310; The Halcyon Isle [1980] 2 Lloyd's Rep 326.

9 The Law and Practice of Admiralty Matters at para 8.09.

10 The Law and Practice of Admiralty Matters at para 8.06; The Ruta [2000] 1 Lloyd's Rep 359.

11 The Admiralty Court Guide (2018) at para 58.

12 The Turtle Bay at [17].

13 See the Special Maritime Procedure Law of the People's Republic of China (1 July 2000) at Arts 30, 32–34.

14 Eugene Cheng Jiankai, "Judicial Sale of Arrested Vessels: The Suitability of Taobao As a Platform for a Singapore Judicial Sale" (2019) 31 SAcLJ 72 at para 3.

15 See the Provisions on Arrest and Judicial Sale of Ships (1 March 2015) at Arts 11–15.

certain expenses and costs, the proceeds of the sale will be paid out in the following order: (a) first, claims entitled to maritime liens; (b) second, claims secured by a possessory lien; (c) third, claims secured by a mortgage; and (d) finally, any other registered maritime claims relating to the ship.[16] It appears that in determining the order of priorities, the Chinese court will apply the lex fori.[17]

Other jurisdictions

I turn now to consider the approaches taken in several other jurisdictions. In terms of the sale process, Japan's approach is somewhere in between that of China and England; the auction of the ship is conducted either through open bids or tender bids.[18] On the other hand, South Africa, the Netherlands and the US take a similar approach to China, that is, sales are generally conducted by open bidding at a public auction.[19] The bidding process in the Netherlands is particularly interesting. First, advanced bidding is used to determine a maximum bid. Thereafter, the judge or notary will set a certain purchase price higher than the maximum bid. This enhanced price is then disclosed to the bidders and downward bidding is employed starting from the enhanced price until a bid higher than the maximum bid or the maximum bid is accepted.[20]

It is also notable that in Japan, the court will obtain a valuation of the ship in order to determine a minimum bidding price.[21] This is similar to the approach taken in England, Singapore and China. In contrast, the Dutch court does not undertake any prior valuation of the ship and is not required to set a minimum price. Furthermore, unlike in England, Singapore and China, where judicial sale is conducted by a court officer or a court-sanctioned committee, judicial sales in the Netherlands are organised by the enforcing creditor's legal representative, albeit under the court's supervision.[22]

In relation to priorities, South Africa, Japan and the US are similar to England, Singapore and China in so far as it is the lex fori that applies to determine the order of priorities.[23] In contrast, South Korea and the Netherlands take a different approach. Specifically, the South Korean

16 See the Provisions on Arrest and Judicial Sale of Ships at Art 22; Norton Rose Fulbright, "Ship arrest and judicial sale in China: update, 2015"<https://www.nortonrosefulbright.com/en/knowledge/publications/00833c2a/ship-arrest-and-judicial-sale-in-china-update-2015>.

17 China's Responses to the Questionnaire by the CMI International Working Group on Ship Financing Security Practices, <https://comitemaritime.org/wp- content/uploads/2018/05/China63124930_1.pdf>.

18 See the Civil Execution Act (Japan) Art 112; Norio Nakamura, "Q&A: ship mortgages and liens in Japan", <https://www.lexology.com/library/>.

19 Bowmans Law, "Ship Auctions – What You Need to Know"<https://www.bowmanslaw.com/insights/shipping-aviation-and-logistics/ship-auctions-need-know/>; Lennard K Rambusch & Jovi Tenev, "International Maritime Workouts", contained in the Business Workouts Manual (Thomson Reuters/West, 2nd Ed, 2008) at §§ 16:32–16:33.

20 Judicial Sales of Ships at pp 84–85.

21 Norio Nakamura, "Q&A: ship mortgages and liens in Japan".

22 Judicial Sales of Ships at pp 82–85.

23 Transol Bunker BV v Motor Vessel "Andrico Unity" and others [1989] 2 All SA 303 (A); Business Workouts Manual at § 16:36; Japan's Responses to the Questionnaire by the CMI International Working Group on Ship Financing Security Practices <https://comitemaritime.org/wp- content/uploads/2018/05/Japan59888948_1.pdf>.

Commercial Code provides that the maritime lien and its status are governed by the law of the country of the registry of the ship.[24] On the other hand, under Dutch law, the existence and scope of claims are determined by the lex causae, whereas priority is governed by the lex registrationis. However, priority higher than a mortgage will only be allowed if the claim is similarly prioritised under Dutch law. In this way, it may be said that the lex fori still applies to some extent.[25] Finally, I note that, similar to China, the order of priorities in South Africa, Japan, South Korea, the US and the Netherlands is statutorily codified.[26]

Challenges and opportunities: past, present and future

The discussion so far reveals that despite broad similarities, the international landscape for judicial sale of ships is far from uniform. This presents certain challenges and opportunities, which I would like to briefly discuss in three parts: (a) first, the challenges relating to the conflict of laws; (b) second, the challenges relating to international recognition; and (c) third, the opportunities presented by the UNCITRAL draft convention on the recognition of foreign judicial sales of ships, also known as the "Beijing Draft".

The conflict of laws

I turn first to the conflict of laws issues in relation to maritime claims and their priorities. The problem that often arises is whether a maritime lien that has been lawfully recognised in one jurisdiction should receive the same privileged status in another jurisdiction whose domestic law does not recognise that maritime lien. This is a complex area of law because the legal regime of property and security rights is highly contentious. Although the applicable law depends largely on whether the jurisdiction characterises the issue as substantive or procedural, different jurisdictions take varying approaches to characterisation. Therefore, the outcome may be very different depending on the court and consequently the legal system which is involved. Furthermore, even if a substantive characterisation is adopted, the arresting forum will have to ascertain and apply the relevant foreign law, which is no easy task.[27] While attempts have been made at the international level to address some of these concerns,[28] their success has been relatively limited.

International recognition

Turning next to international recognition, it may be said that this is one of the greatest

24 See the Private International Law Act (South Korea) Art 60; Woo Rin Sung, "South Korea: Ship Arrests and Maritime Liens in South Korea" <https://www.mondaq.com/marine- shipping/1088422/ship-arrests-and-maritime-liens-in-south-korea>.

25 Judicial Sales of Ships at pp 86–87.

26 Admiralty Jurisdiction Regulation Act 105 of 1983 (South Africa) s 11; Business Workouts Manual at § 16:36; Commercial Code (Japan) Arts 843 and 848; Hiroshi Oyama & Fumiko Hama, "Japan: Shipping Laws and Regulations 2021" <https://iclg.com/practice- areas/shipping-laws-and-regulations/japan>; Korean Commercial Code Arts 777–788.

27 Judicial Sale of Ships at pp 144–145, 158.

28 See the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages 1926, the International Convention for the Unification of Certain Rules of Law Relating to Maritime Liens and Mortgages 1967, and the Geneva Convention on Maritime Liens and Mortgages 1993.

challenges to the judicial sale of ships. Recognition by the country of registration is particularly important because non-recognition can impede the purchaser's attempt to deregister the ship and thereafter to register it in his country of choice.[29]

Non-recognition may also undermine the raison d'etre of judicial sale – conferring clean title onto the purchaser. This is illustrated by a recent case involving the Panama-flagged bulk carrier "Trading Fabrizia", subsequently renamed the "MV Bright Star".[30] The ship was arrested in Jamaican waters and sold by the Jamaican Supreme Court "free and unencumbered" on 9 January 2018 for $10.3m. The Jamaican court did not recognise the first-ranking priority of the mortgagee's claim under Maltese law, but instead reserved $3m for the mortgagee to submit a claim in Jamaica. Subsequently, the ship was arrested by the mortgagee while passing through Maltese territorial waters for bunkering. On 17 June 2019, Malta's Superior Court of Appeal agreed with the mortgagee that since Jamaica had not recognised the legal effect of the Malta-registered mortgage on the ship and the creditors' rights, the Maltese court could not recognise the sale of the ship in Jamaica as having been made free and unencumbered. Accordingly, the arrest was upheld.

This example demonstrates how non-recognition can significantly reduce the legal protection intended to be conferred onto a purchaser via judicial sale. It bears emphasis that ships are highly mobile. It would hardly do for a ship to be judicially sold in one jurisdiction apparently free of all encumbrances, but then arrested again in another jurisdiction. This would engender significant uncertainty.[31] It is precisely this problem that the Beijing Draft seeks to address, which I now go on to discuss.

The Beijing Draft

The Beijing Draft seeks to harmonise the procedure under which the judicial sale of ships by courts would be conducted and recognised. In the interests of time, I propose to briefly highlight some of its pertinent aspects.

·Article 4 sets out certain notice requirements that must be fulfilled before judicial sale takes place.

·Article 5 provides that where the judicial sale has been carried out in accordance with the procedure in the Beijing Draft, the court or authority conducting the judicial sale will issue a certificate to similar effect.

---

29 Such difficulties are apparent from cases such as The "Acrux" [1962] 1 Lloyd's Rep 405; The "Galaxias" (1988) LMLN 240; and Goldfish Shipping SA v HSH Nordbank AG 2008 WL 4809410.

30 Stuart Hetherington, Speech at the UNCCA 5th Annual May Seminar, "Judicial Sale of Ships" delivered on 10 May 2019 at pp 4–5; Insurance Marine News, "Malta Superior Courts of Appeal revokes lower court decision on MV Bright Star" <https://insurancemarinenews.com/insurance-marine-news/malta-superior-courts-of-appeal-revokes-lower-court-decision-on-mv-bright-star/>;Matthew Agius, "World first as court says ship's Malta mortgage overrides foreign auction"<https://www.maltatoday.com.mt/news/national/92921/world_first_as_court_says_ships_malt a_mortgage_overrides_foreign_auction>.

31 Judicial Sale of Ships at p 157.

·Article 6 provides that a judicial sale shall have the effect of conferring clean title to the ship on the purchaser.

·Article 7 obliges the ship registry in another Contracting State to recognise the judicial sale and deregister the ship accordingly.

·Article 8 provides that there is to be no arrest of the ship in respect of a claim arising prior to the judicial sale.

·Article 9 confers exclusive jurisdiction onto a Contracting State to hear any claim or application to avoid or suspend a judicial sale conducted in that Contracting State.

·Finally, Article 10 provides that any challenge to recognition of the judicial sale is limited to the following grounds: (i) the ship was not within the jurisdiction of the court which ordered the sale; (ii) the sale was procured by the purchaser's fraud, and (iii) the effect of recognition would be manifestly contrary to public policy. Such challenges may only be brought by the shipowner, the holder of the mortgage or registered charge against the ship, or the holder of a maritime lien.

Conclusion

To conclude, it is clear that the judicial sale of ships, with its unique function of conferring clean title onto the purchaser, is an extremely important mechanism in the modern maritime context, both for maritime claimants and potential purchasers. While challenges exist which complicate the approach to maritime claims and occasionally threaten to undermine the efficacy of a judicial sale, it is apparent that the Beijing Draft seeks to address many of these challenges so as to serve the needs of the maritime industry and to promote the secure financing of ships. It remains to be seen how the Beijing Draft might further evolve to address the needs and concerns of the stakeholders involved. That said, the discussions to-date have made encouraging progress. Meanwhile, it is hoped that, in the spirit of international comity, countries will continue to respect the principles underlying the judicial sale of ships, so as to provide the maritime industry with the certainty it requires to thrive.

Thank you.

Towards an International Instrument on The Judicial Sale of Ships

José Angelo Estrella Faria, Principal Legal Officer and Head of Legislative Branch of UNCITRAL

Background to the project

Since 2018, the United Nations Commission on International Trade Law (UNCITRAL) has been working towards an international instrument on the judicial sale of ships.[1] The project is being carried out by UNCITRAL Working Group VI.[2]

The decision to add the judicial sale of ships as a topic to the work programme of UNCITRAL followed a proposal of the Comité Maritime International (CMI). [3] The proposal outlined certain problems associated with the non-recognition in one State of judicial sales ordered in another State, and suggested that those problems could be addressed by a simple, largely procedural, international instrument. To that end, the proposal referred to a draft convention on the recognition of foreign judicial sales of ships that had been prepared by the CMI, known as the "Beijing Draft". [4] A follow-up proposal[5] recognized that the work of the CMI provided "a useful starting point to further UNCITRAL work, providing guidance for a working group and indicating the direction that might be taken".

At its first session to consider the topic in May 2019, UNCITRAL Working Group VI agreed that the Beijing Draft provided a useful basis for its work.[6]

Current state of the law

In many States, courts have the authority to order the sale of a ship to satisfy a claim that is brought against the ship or shipowner. Such a claim is usually brought to foreclose a ship mortgage (in the event of default in repayment) or to enforce a maritime lien against the ship (a mechanism peculiar to maritime law by which a right to bring certain claims – such as recovery of wages, port charges and loss and damage claims – is secured against the ship, regardless of change in

1 The report of the session of UNCITRAL at which the decision was taken to add the topic to the work programme is available at https://undocs.org/A/73/17 (see paragraph 252).

2 The report of the session of Working Group VI at which the topic was first considered is available at https://undocs.org/A/CN.9/973.

3 The CMI is a non governmental organization granted observer status with UNCITRAL whose object is "to contribute by all appropriate manes and activities to the unification of maritime law in all its aspects" (see https://comitemaritime.org/about-us/). The CMI proposal is available at https://undocs.org/A/CN.9/923.

4 The draft was developed by an international working group of the CMI and presented at the 40th international conference of the CMI, held in Beijing in October 2012.

5 The proposal is available at https://undocs.org/A/CN.9/944/Rev.1.

6 See https://undocs.org/A/CN.9/973, paragraph25.

ownership). In order to secure the claim, the claimant will ordinarily ask the court to detain or "arrest" the ship. The sale ordered by the court is referred to as a "judicial sale". It is estimated that at least several hundred judicial sales are conducted around the world each year.

While the international community has achieved significant progress in harmonizing rules on the arrest of ships,[7] much less progress has been achieved in harmonizing rules on judicial sales. It therefore remains for the law of each State to determine, within its jurisdiction, the legal effect of judicial sales ordered by its courts, as well as the legal effect of foreign judicial sales.

In many States, a judicial sale has the legal effect of conferring "clean title" on the purchaser. In other words, the sale extinguishes all rights and interests that were previously attached to the ship, including mortgages and maritime liens. Any claim arising from those pre existing rights and interests is left to be made against the proceeds of sale according to the priorities among creditors under applicable law. In other States, some pre existing rights and interests can remain attached to a ship despite a judicial sale. For instance, a purchaser may voluntarily assume a pre existing mortgage, or the law of the State of judicial sale may preserve some pre existing rights and interests. This means that a purchaser may receive clean title if the judicial sale is conducted in one State but not if it is conducted in another State.

These differences extend to foreign judicial sales. In some States, a foreign judicial sale is given the legal effect that it has under the law of the foreign State in which the judicial sale was conducted (i.e. the foreign State of judicial sale). Accordingly, the State will "recognize" that the purchaser has clean title in the ship if indeed clean title was conferred by the law of the foreign State of judicial sale. There is therefore no impediment to the transfer of registration of the ship to the purchaser (if the ship is to remain registered in the same registry and thus keep its flag) or to the deregistration of the ship (if the ship is to be registered in another registry and thus change its flag). In other States, the law preserves some pre existing rights and interests despite the foreign judicial sale, which means that these rights and interests can still be enforced against the ship. As such, the ship may be arrested in that State or deregistration may be blocked.

The need for harmonized rules

The Working Group has recognized that the current state of the law gives rise to important practical problems that would benefit from an international instrument establishing harmonized rules on the judicial sale of ships.[8] First, the difference between legal systems creates uncertainty for a bona fide purchaser as to its title in the ship and its ability to use the ship freely following the judicial sale. Second, this uncertainty has a negative effect on the price that the ship is able to attract in the market, which in turn reduces the proceeds that are available for distribution among creditors. Third, the uncertainty has a negative effect more generally on international trade and maritime insurance coverage.

7 See, e.g., the International Convention Relating to the Arrest of Seagoing Ships (1952).

8 See https://undocs.org/A/CN.9/973, paragraphs 12, 13 and 17.

At a 2018 colloquium in Valletta, hosted by the Government of Malta in collaboration with the CMI and with the support of the UNCITRAL secretariat, and attended by representatives from governments, courts, the legal community and the international maritime industry, a broad consensus emerged in support of an international instrument to remedy the kinds of problems recognized by the Working Group. Industry participants included representatives of the Baltic and International Maritime Council (BIMCO), the International Transport Workers' Federation (ITF) and the Federation of National Associations of Ship Brokers and Agents (FONASBA), as well as ship financiers, shipowners, bunker suppliers, ship repairers, harbour authorities and ship registries.

Status of the project and expected outcomes

UNCITRAL Working Group VI has held four sessions since May 2019.[9] Working Group sessions are open to all UN Member States. The Working Group enjoys the active participation of delegations from major flag and shipowning States, as well as from States with large maritime finance industries. It also enjoys the expertise of maritime industry stakeholders represented by international intergovernmental organizations such as the International Maritime Organization and non governmental organizations such as CMI, BIMCO, ITF and the International Chamber of Shipping (ICS).

Ordinarily, the Working Group meets biannually, alternating between the United Nations Headquarters in New York and the Vienna International Centre, where the UNCITRAL secretariat is based. The COVID 19 pandemic has forced delegations and the UNCITRAL secretariat to find novel ways to keep the work on an "even keel". The last three sessions of the Working Group have taken place in "hybrid" format, with most delegations participating remotely via an online platform. The platform supports simultaneous interpretation in all six official languages of the United Nations.

While a final decision is yet to be taken,[10] the working assumption within the Working Group is that the eventual international instrument will take the form of a convention.[11]

The Working Group has decided to focus on the recognition of foreign judicial sales. The current draft convention (in the form of the fourth revision of the Beijing Draft[12]) the recognition regime is underpinned by the following basic harmonized rules:

1.A judicial sale that is conducted in one State Party and which has the effect of conferring clean title on the purchaser has the same effect in every other State Party, subject to a public policy exception.

2.At the request of the purchaser, the ship registry (whether in the State of judicial sale or another State) is required to deregister the ship or transfer registration.

9 Further information and documentation for each session is available on the dedicated webpage for the project: https://uncitral.un.org/working_groups/6/sale_ships.

10 See https://undocs.org/A/CN.9/1007, paragraph 99.

11 See https://undocs.org/A/CN.9/1047/Rev.1, paragraph 15.

12 See https://undocs.org/A/CN.9/WG.VI/WP.92.

3.No action may be taken to arrest the ship for a claim arising from a pre existing right or interest (whether in the State of judicial sale or another State).

4.Only the courts of the State of judicial sale can hear a challenge to the judicial sale.

By focussing on the recognition of foreign judicial sales, the draft does not:

a.regulate the procedure or legal effect of a judicial sale within the State of judicial sale;

b.harmonize rules on the recognition and prioritization of maritime liens;[13] or

c.apply to enforcement actions taken against a ship in tax, administrative or criminal matters (e.g., seizure and sale).

To support the operation of the recognition regime, and to safeguard the rights of parties with an interest in the ship, the draft convention also provides for two separate instruments to be issued in the State of judicial sale – a notice of judicial sale and a certificate of judicial sale. The Working Group is considering the establishment of a repository of these instruments that would be publicly accessible online to any interested entity or person online.[14]

The Working Group has made significant progress on the draft even in spite of the challenges presented by the COVID 19 pandemic. By some estimates, the Working Group may be in a position to complete the draft in 2022, whereupon it would be referred to UNCITRAL for approval and then to the United Nations General Assembly for adoption. In UNCITRAL tradition, the convention would be open for signature soon after adoption at a signing ceremony hosted by a State member of UNCITRAL with a particularly close association with the project.

13 UNCITRAL has confirmed that issues relating to the recognition and prioritization of maritime liens are outside the scope of the mandate of the Working Group (see https://undocs.org/en/A/74/17, paragraph 188).

14 For an initial consideration of the repository mechanism, see A/CN.9/1047/Rev.1, paragraphs 76 to 81.

Join Hands to Forge Ahead with Dedication —Opinions on International Recognition of Judicial Sales of Ships

Wu Xielin, Justice, President of Fujian High People's Court of the People's Republic of China

Distinguished Chief Justices, Presidents of Supreme Courts,
Guests, ladies and gentlemen, friends,

Good afternoon! Since 2013, when General Secretary Xi Jinping put forward the "Belt and Road" Initiative (BRI) of great significance, the ancient Silk Road has regained vitality and energy, as countries alongside the route are joining hands to propel maritime prosperity. The Chinese courts are always committed to enhancing international cooperation on maritime justice, providing judicial service and guarantee for standardizing international shipping orders, and promoting the development of international shipping. Today, it gives me the great honor to engage in the discussion on the topic of "International Recognition of Judicial Sales of Ships".

The development of modern shipping is inseparable from ship commercial financing. Judicial sales of ships is an essential legal system to effectively protect commercial financing modes, and an important means to actualize the interests of creditors during the operation of ships. The international recognition of judicial sales of ships is related to the immediate interests of multiple stakeholders, including owners, financiers, creditors, and purchasers of the ships, and will undoubtedly exert a significant impact on the development of the international shipping industry. By now, there is no international convention to regulate international recognition of judicial sales of ships, and this issue has triggered a number of uncertainties at the level of international legislation. Therefore, it is of vital practical significance to adopt uniform international legal rules to enhance legal certainty of judicial sales of ships, so as to encourage ship financing, protect the interests of creditors, and guarantee the freedom of navigation of ships.

I. General Information of Maritime Justice and Practical Experience of Judicial Sales of Ships in China

Currently, with 11 maritime courts, China is the country with the largest number of special organs for maritime justice and maritime cases being accepted. From 2018 to 2020, China has concluded 53,757 maritime cases of first and second instance in total, involving more than 100 countries and regions. China has promulgated the *Maritime Code*, the *Special Maritime Procedure Law*, and relevant judicial interpretations, with full coverage of all regular maritime disputes. More and more foreign litigants choose to file maritime litigation and apply for ship arrest in China. From 2019 to 2020, Chinese maritime courts have arrested 1,164 ships, including 89 ships of foreign

nationality; auctioned 630 ships, including 14 ships of foreign nationality, and made China the country with the largest number of ships being arrested and auctioned by courts across the world. In the case of DVB Bank SE v. ISIM Amin Limited, etc. for the dispute over ownership of a ship, the foreign party voluntarily chose to apply for the arrest of the ship and filed a lawsuit in China. Xiamen Maritime Court auctioned the giant ship involved in the case in accordance with the law, concluded the transaction at 324 million yuan (in RMB, the same below), which was 80 million higher than the starting price, and facilitated the successful settlement of all the relevant disputes through mediation. The relatively complete maritime legal system and extensive judicial practical experience in China have provided a robust legal guarantee for the far-reaching development of the shipping industry.

(1) Draw lessons from conventions and improve relevant legal systems. China, by taking advantage of international conventions and successful experience of other countries, has promulgated the *Special Maritime Procedure Law* with special chapters stipulating issues on ship arrest and auction, and registration and distribution of creditors' rights, and has enacted judicial interpretations to the *Special Maritime Procedure Law*, and on ship arrest and auction, to regulate judicial auction of ships, and ensure the fairness and transparency of ship auction.

(2) Reasonably distribute the burden of proof, and equally protect the interests of all parties. The judicial interpretation in China clearly stipulates that the parties shall provide exact information relating to the already-known preferential creditor, mortgagee, and owner of the ship as required by law, in order to protect the legitimate rights and interests of stakeholders, and avoid an excessive long period of auction delayed by the court query. It is conducive to selling the ship as early as possible and striking a balance between equality and efficiency.

(3) Give full play to technologies, and comprehensively innovate the working mechanism. China has upgraded and reformed the website of "China Foreign-Related Commercial and Maritime Trial" to enable judges to have access to real-time information of ship registration and location just with a computer, to facilitate ship arrest and supervision. China publishes notices on ship auction on the Internet in accordance with the law, to help creditors keep abreast of the situation of the ships, and effectively exercise their legitimate rights. Ships are auctioned online, with low costs, a wide range of participation, competitive bidding, and visibility of the whole process, to improve the informationization and intelligence of ship auction.

II. Recommendations for Promoting and Improving the *Draft Convention*

The *Draft International Convention on Foreign Judicial Sales of Ships and Their Recognition* is the outcome of several years' efforts of the Working Group VI of the UNCITRAL, the IMO, the CMI, and the participating countries, fully demonstrating the great importance of the international community to creating a sound environment for international maritime's rule of law and business. However, given the considerable differences between the countries in languages, cultures, legal traditions, and shipping development modes, how to better balance the interests and demands of

stakeholders in the countries is a common concern of the international maritime community.

We are ready to contribute our maritime judicial wisdom to the preparation of the *Draft Convention* and would like to share the following recommendations. **First, improve the influence of the Convention reliant on cooperation.** China will strengthen cooperation with the international community, uphold the philosophy of rule of law, fully accommodate the concerns of all parties, and adopt a positive and pragmatic attitude with a view to jointly formulating viable and effective international rules of universal guiding significance. **Second, enhance the appeal of the Convention based on compatibility.** We should properly handle the connections between different conventions, perfect the expression of clauses, learn from and apply the established concepts in existing international conventions to avoid divergence and conflicts, coordinate differences between different jurisdictions through the international conventions, to achieve the goal of promoting the development of shipping industry and meeting the needs of shipping financing. **Third, maintain the vitality of the Convention driven by innovation.** We should jointly be committed to improving the efficiency of ship auction by taking advantage of the information technology, continuously optimizing the function of the "Online Center for Centralized Storage" to provide the parties convenient access to information of relevant ships, and fully consider adopting the Internet-based publishing method, which deems the judicial sales notice to served by uploading it to the "Online Center for Centralized Storage". **Fourth, reinforce the executive force of the Convention to achieve win-win results.** Judicial sales, if satisfying the requirements of the Convention, should be fully respected, and ships should obtain the "clean title" after judicial sales. For the purpose of reinforcing the international credibility of the judicial sales system of ships, we should make clear provisions on special circumstances where the judicial sale does not have international validity, to avoid ambiguity in the process of interpretation by the courts of the countries.

The *Draft Convention* condenses the consensus reached by the international maritime law community, including China and other participating countries, on international recognition of judicial sales of ships. Let's join hands to make our contributions to making the Draft be widely accepted as an international convention to ensure the smooth and orderly operation of the Maritime Silk Road.

Adherence to "People-oriented and Life First" Equal Protection of the Legitimate Rights and Interests of Chinese and Foreign Crew Members

Zhang Jiatian, Justice, President of Shandong High People's Court of the People's Republic of China

Distinguished Chief Justices, Presidents of Supreme Courts,
Guests, ladies and gentlemen, friends,

Good morning. It gives me great honor to attend the Maritime Silk Road International Forum on Judicial Cooperation. Crew members, as an ancient occupation, have been working in the front line of the shipping industry and are the most fundamental, important, and active production factor in the shipping economy. In recent years, Chinese courts have attentively implemented Xi Jinping Thought on the Rule of Law and coordinated both the domestic and overseas-related rule-of-law upholding the concept of "people-oriented and life first". Remarkable progress has been made in strengthening judicial protection of the legitimate rights and interests of crew members in support of the marine economy development. On the basis of Chinese courts' exploration and practice, I would like to exchange ideas with you all about "Judicial Protection of the Legitimate Rights and Interests of Crew Members under the COVID-19 Epidemic" in the following stage.

First, we adhere to "people-oriented" principle to constantly promote the judicial protection of crew members' rights and interests.

China is a leading maritime nation, a major shipping country as well as a major seafarer country where the number of registered crew members has exceeded 1.6 million, more than any other country around the world. Meanwhile, disputes over crew members' rights and interests are more likely and frequent to occur. Disputes over the unilateral termination of labor contracts with crew members have frequently occurred after the outbreak of the COVID-19 epidemic. Under such circumstances, Chinese courts have taken active actions to meet the judicial needs of crew members. **First, we effectively hear disputes over crew members' rights and interests in accordance with the law.** For instance, courts in Shandong have accepted 1,320 cases over crew's labor contract and crew's personal injury compensation since the outbreak of COVID-19 with an average of 69 days per trial. **Second, we improve the rules of adjudication.** The Supreme People's Court reconciled the application of law and adjudication standards of disputes concerning the rights and interests of crew members related to the epidemic by the *Guiding Opinions on Several Issues Concerning Properly Handling Civil Cases Related to COVID-19 Epidemic in Accordance with the Law*. Moreover, the Court established safeguard mechanisms and broadened relief channels in response to emergencies where crew members are infected with the coronavirus by the *Provisions*

of the Supreme People's Court on Several Issues Concerning Trial of Cases Involving Seaman-related Disputes. **Third, we timely update the adjudication principles.** The Chinese courts have accurately grasped the influence of epidemic on the law concerning crew members' rights disputes and heard each case following the principle that the right to life and health always comes before the ordinary creditor's rights. For example, Qingdao Maritime Court heard a series of cases concerning labor contract disputes brought by five crew members, including WANG Zheng, et al., against a fishery company in Qingdao. In this case, five crew members working at an ocean fishing vessel in Senegal disembarked and returned home with a failed attempt to terminating labor contracts, due to insufficient epidemic prevention measures onboard in view of the severe epidemic in the local area. Qingdao Maritime Court held that the unilateral disembarking of five crew members was a legitimate act to safeguard their rights to life and health, which did not constitute a breach of contract, so the Court ruled for the crew members to terminate their labor contracts and affirmed the crew members' claims.

Second, we innovate judicial measures to maximally safeguard the legitimate rights and interests of crew members.

The key to the protection of crew members' rights and interests is timely access to legal support. Therefore, Chinese courts have developed a set of relatively mature mechanisms and practices. **First, we formulate summary trial procedures on crew members' personal injury and labor disputes.** Green lanes for disputes over the rights and interests of crew members related to the epidemic are opened to ensure quick case-filing, quick preservation, quick trial, and quick enforcement, shortening the period of realization of crew members' legitimate rights and interests. **Second, we formulate the process specification concerning ship arrest and auction.** Considering the prevention and control of the epidemic, ships are auctioned by livestreaming to maximally ensure the realization of creditor's rights such as crew members' wages. For example, courts in Shandong have successfully auctioned 40 ships online and more than 200 crew members' wages have been paid off after enforcement since the outbreak of the epidemic. **Third, we implement the litigation service system of "accessing all the services through a single online portal".** In this way, we do not only achieve case-filing online, online trial, online authorization and witness, but also pioneer "Cross-border Cloud Justice" which is convenient for Chinese crew members abroad to participate in a lawsuit online, lifting the restrictions caused by the epidemic and space.

Third, we strengthen judicial relief to manifest the advantages of maritime judicial system in China.

The COVID-19 epidemic has left more than 400 thousand crew members stranded at sea for a long time and a large number of crew members have been at the risk of unemployment because they cannot get aboard. While being committed to protecting crew members' legitimate rights and interests in accordance with the law, Chinese courts endeavor to remove obstacles in the "last kilometer" of the judicial services. **First, we strengthen judicial assistance.** We actively apply for

judicial assistance fund for crew members who are in financial difficulties due to litigation during the epidemic prevention and control period to ensure their basic livelihood. **Second, we establish the "pre-litigation cooperative dispute resolution" mechanism.** In some places where disputes over the rights and interests of crew members are amassed due to the epidemic, we establish a cooperation mechanism with the local government to resolve the disputes in a quick and efficient manner. In 2020, the pre-litigation resolution rate of disputes over the rights and interests of crew members related to the epidemic reached 26.83% with an average resolution time of 27.8 days. **Third, we proactively provide humanitarian assistance.** In a series of cases concerning SAM LION concluded last year, foreign parties voluntarily applied to Qingdao Maritime Court for the arrest of ships. Under the pressure brought by the shipowner who abandoned the ship and the epidemic prevention and control, Qingdao Maritime Court quickly appointed a provisional administrator of the ship to provide sufficient supply and medical supplies. After successfully addressing crew members' salary issues, the Court made coordinated efforts with relevant authorities to help 21 foreign crew members from Ukraine and the Philippines return home successfully, gaining high recognition from the embassies of the two countries. The proper handling of cases concerning SAM LION fully guarantees foreign crew members' legitimate rights and interests, and helps ship buyers recover normal production and operation soon. The series of cases also reveal foreign parties' acceptance and trust of maritime justice in China and China's responsibility as a major maritime country.

Guests, ladies and gentlemen, friends, crew members are the cultivators of the blue ocean and the most basic component of building a maritime community with a shared future. In the next stage, guided by Xi Jinping Thought on the Rule of Law, Chinese courts will actively take the essence from the good experience and practice of countries and regions around the world, give full play to the unique role of justice in safeguarding the rights and interests of crew members, and provide a "China approach" to properly handle disputes over the rights and interests of crew members during the epidemic and help shipping companies to resume work and production in an orderly manner.

Thank you.

Protection of Crew's Rights and Interest under COVID-19

Estela M.Perlas-Bernabe, Senior Associate Justice of the Supreme Court of Republic of the Philippines

Good afternoon to the eminent country representatives and participants of this International Forum on Judicial Cooperation.

I am Senior Associate Justice Estela M. Perlas-Bernabe from the Supreme Court of the Philippines, and I have been asked to speak about the Philippine legal experience regarding Protection of Crew's Rights and Interest under COVID-19.

As evinced by relevant data, **the shipping industry is one of the most important channels of commerce and trade that continuously spurs economic cooperation between and among our countries.** According to the Maritime Industry Foundation Knowledge Centre, the international shipping industry is responsible for the carriage of around 90% of world trade[1] covering different types of goods. The nonstop transportation of these goods allows different countries to create industries, construct cities, move populations, and transform resources into refined products.[2]

As part of its prominence,**"[s]hipping [has also been regarded as] the safest and most environmentally benign form of commercial transport."**In fact, **"[s]hipping was amongst the very first industries to adopt widely implemented international safety standards."** Because of its inherently international nature, the safety of shipping is regulated by various International agencies, such as the International Maritime Organization (IMO) which has developed a comprehensive framework of global maritime safety regulations.[3]

As we all know, the World Health Organization's (WHO) declaration of COVID-19 as a pandemic had affected various aspects of our daily lives, and its effects were also felt by the international shipping industry. Trade chains, including major import and export trade, were affected; operations were severely impeded; and **many workers and staff are being trapped onboard the vessels due to either being in quarantine, or for other prescribed safety issues.**[4]

In response to the pandemic, the international community, led by no less than the United Nations General Assembly (UNGA), **adopted a Resolution on December 1, 2020** urging Member States to designate seafarers and other marine personnel as **"key workers."** It also highly encouraged governments and relevant stakeholders **to implement health protocols to ensure safe**

1 See https://www.maritimeinfo.org/en/Why-Maritime/Shipping-Facts (last accessed September 1, 2021).

2 See https://www.ics-shipping.org/shipping-fact/shipping-and-world-trade-driving-prosperity/ (last accessed September 1, 2021)

3 Id.

4 See https://www.mondaq.com/marine-shipping/958770/impact-of-covid-19-on-the-shipping-and-maritime-industry (last accessed September 1, 2021).

ship crew changes and travel during the COVID-19 pandemic, as well as prompt access to medical care in port States. [5]

For its part, the International Labour Organization (ILO) called upon the international community to protect seafarer rights during the pandemic, by, among others, guaranteeing their access to prompt and adequate medical care while on board and medical facilities while on shore, including access to vaccination.[6]

Likewise, the International Chamber of Shipping (ICS), just last June 7, 2021, issued its COVID-19 Guidance for Ship Operators for the Protection of the Health of Seafarers, which provided for shipboard measures to address risks associated with COVID-19, as well as basic information on vaccination and medical care in ports.

In recognition of these international standards as well as its own State policy to promote seafarer rights as a form of social justice,[7] various Philippine agencies have crafted and are adamantly monitoring the implementation of COVID-19-related measures as early as a few days before the WHO's declaration of COVID-19 as a pandemic.

At the forefront of these efforts is the Philippine Overseas Employment Administration, or the POEA, a government agency whose core functions include the protection of the welfare of Overseas Filipino Workers (OFWs).

As necessitated by the pandemic, the POEA issued **Memorandum Circular No. 03, Series of 2020**,[8] which states that: **(1)** sea-based workers who have contracted COVID-19 shall be compensated by their principals or employers;[9] **(2)** all manning agencies must make arrangements **to release the final wages of seafarers under quarantine at the soonest practicable time;** [10] and **(3)requests for contract of extension** due to possible delay in disembarkation and repatriation of seafarers due to COVID-19 **shall be allowed.** [11]

In addition, the POEA issued **Governing Board Resolution No. 13, Series of 2020** which specifically provides that "a seafarer who already signed an employment contract but cannot be deployed from the point of hire due to COVID-19 related reasons **shall be provided with accommodation and food at the principal/employer's cost, unless provided by the government, until the seafarer is deployed or returned home, and even until the contract cancellation."** "Also, a seafarer who was deployed but becomes stranded during his transit [or has already signed a contract but was medically repatriated because of COVID-19] **shall [still] be paid basic pay, accommodation, food, and medical benefits at principal/employer's cost until the seafarer**

5 See UNGA Resolution dated December 1, 2020, pp. 2-3.

6 ILO Information Note dated February 3, 2021, pp. 8-14.

7 Castillon v. Magsaysay Mitsui OSK Marine, Inc., G.R. No. 234711, March 2, 2020.

8 Entitled "General Guidelines on the Management of the Corona Virus Disease (COVID-19) Situation."

9 POEA Memorandum Circular No. 3, Series of 2020 dated February 27, 2020, Section 4.b.1.

10 POEA Memorandum Circular No. 3, Series of 2020 dated February 27, 2020, Section 4.b.2.

11 POEA Memorandum Circular No. 3, Series of 2020 dated February 27, 2020, Section 4.b.3.

joins the vessel." [12]

To bolster seafarer protection, the Philippine Departments of Foreign Affairs, of Justice, Labor and Employment, Health, Interior and Local Governments, and Transportation, coordinately issued Joint Circular No. 1, Series of 2020,[13] which, among others, established the **"Philippine Green Lane,"** a terminal facility that permits the safe and swift travel of seafarers, including their disembarkation and crew change subject to health protocols.

The Joint Circular also imposes certain responsibilities on both **the private sector and the National Government** for the protection and benefits of Filipino seafarers. **For instance, licensed manning agencies, shipping principals, or agents** are mandated to provide for appropriate COVID-19 testing measures, as well as provisions for meals, accommodation, and transportation from the point of hire to intended destination.[14] The costs of testing shall then be charged to the National Health Insurance Program.[15] **Meanwhile,** government agencies having supervision and regulation over authorized international gateways are required to either: **(1)** enhance their own testing facilities and laboratories for seafarers; or **(2)** partner with an accredited entity that could provide these facilities. They are also mandated to designate a **special testing lane** for Filipino seafarers. [16]

Should there be **any disputes** between Filipino seafarers and their manning agencies and/or principals concerning wages, and other crew rights, seafarers may avail of administrative and judicial remedies pursuant to existing rules and regulations. In this regard, video conference hearings have already been allowed for the remote appearance of parties and hearing officers.[17]

All in all, the Philippines is one with the global community in recognizing the seafarers' integral role in keeping operational the international shipping industry. As there is still no foreseeable end in sight to this pandemic, our government, together with the private sector, continuously strives to explore more innovative ways to safeguard the safety and welfare of our seafarers, and at the same time balance the interests of international trade and economy, towards the end of achieving a "win-win" scenario despite the difficulties of the present situation.

Thank you for your time, and I wish everyone a pleasant day and a productive Conference moving forward.

---

12 Available at https://www.dole.gov.ph/news/poea-assures-protection-of-seafarers-during-pandemic/(lastaccessed September 1, 2021).

13 Entitled "Guidelines for the Establishment of the Philippine Green Lane to Facilitate the Speedy and Safe Travel of Seafarers, Including their Safe and Swift Disembarkation, and Crew Change During the COVID-19 Pandemic" dated July 2, 2020.

14 Joint Circular No. 1, Series of 2020 dated July 2, 2020, Section III(2)(c).

15 Id.

16 Joint Circular No. 1, Series of 2020 dated July 2, 2020, Section IV (4).

17 See POEA Memorandum Circular No. 8, Series of 2021 dated April 6, 2021.

Give Full Play to Policy's Leading Role, Integrate Various Resources, and Strengthen Scientific and Technological Support to Promote Prosperous Development of International Commercial Dispute Resolution Mechanism

Chen Fengchao, Justice, President of Hainan High People's Court of the People's Republic of China

Distinguished Chief Justices, Presidents of Supreme Courts,

Guests, ladies and gentlemen, friends,

Good morning! It is my great honor to participate in this forum.

As an important constituent of a country's legal business environment, the development of diversified international commercial dispute resolution mechanism has received increasing attention globally. With the expanding influence of the *New York Convention*, the *Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters* and the *Singapore Convention*, internationalization, diversity and informatization have become the trend of international commercial dispute resolution mechanism. Following the trend, Chinese courts actively promote the construction of Belt and Road diversified international commercial dispute resolution mechanism. I will discuss and exchange views with you on the theme of Innovation and Improvement of Diversified International Commercial Dispute Resolution Mechanism with showcases of the judicial practice of Hainan High People's Court.

I. Give full play to policy's leading role in actively promoting the internationalization of international commercial dispute resolution mechanism

Against the complicated international situation, China has always adhered to opening up to the outside world and actively promoted trade multilateralization and economic globalization. A fair and efficient diversified international commercial dispute resolution mechanism is an important guarantee for creating a market-oriented, law-based and internationalized business environment, promoting trade and investment liberalization and facilitation, and opening up further to the outside world. In recent years, from central to local governments, from the legislature to judiciary, China has actively introduced relevant policies or laws and regulations to thoroughly implement the major strategic plan of opening up to the outside world, which has promoted the vigorous development of a diversified international commercial dispute resolution mechanism.

Steadily advancing the Hainan Free Trade Port is a major strategic decision made by the Party Central Committee with Comrade Xi Jinping at its core. At the central level, the *Master Plan for the Construction of Hainan Free Trade Port* proposed that the Hainan Free Trade Port should be

benchmarked against the international business environment evaluation system and a compatible international commercial dispute resolution mechanism should also be built. At the legislative level, the *Hainan Free Trade Port Law of the People's Republic of China* provides legal support to the establishment of a diversified commercial dispute resolution mechanism. The Standing Committee of the People's Congress of Hainan Province issued the *Regulations on Diversified Dispute Resolution in Hainan Province*, which explicitly allows foreign commercial mediation institutions to participate in commercial mediation in the free trade port by way of special economic zone legislation, which has strongly promoted the internationalization of commercial mediation in the free trade port.

To enhance the people's courts' ability to serve and safeguard the construction of the free trade port, the Supreme People's Court issued a guideline in January 2021 to make specific arrangements for the construction of international commercial dispute resolution mechanism, actively promoting the construction of an international commercial dispute resolution center in Hainan, introducing prestigious international commercial arbitration and mediation organizations, and establishing a "one-stop" international commercial DDR platform where mediation, arbitration and litigation are organically connected. The Supreme People's Court also supports Hainan to set up market-oriented international commercial mediation institutions and overseas international arbitration institutions to set up branches in Hainan Free Trade Port to carry out commercial mediation and arbitration. At present, Hainan courts are working on the establishment of the Hainan Free Trade Port international commercial dispute resolution center, committed to transfer Hainan into a preferred place for international commercial dispute resolution.

II. Integrate various resources to continuously promote the diversity of international commercial dispute resolution mechanism

Diversity is an important principle of international commercial dispute resolution, which is mainly reflected in terms of subjects and approaches. Such principle is in line with the diversity of subjects involved in the construction of the Belt and Road Initiative, the complexity of dispute types and the differences in legislation, judicial and legal culture of different countries, which is conducive to seeking the best dispute resolution for cross-border disputes and promoting international legal cooperation and mutual trust. In the past three years, Chinese courts have heard 136,779 commercial and maritime cases involving foreign, Hong Kong, Macao and Taiwan affairs and many maritime decisions have been recognized and enforced in Germany, the United States, the United Kingdom, Singapore, Israel, South Korea and other countries, further highlighting the important role and status of the judiciary in cross-border dispute resolution. United Nations Commission on International Trade Law has included 35 judicative documents of Chinese courts in its database, manifesting that Chinese judicial cases have become an important source of enriching international treaty practice.

In implementing policies and initiatives of the central government and the Supreme People's Court, the Hainan High People's Court, by virtue of Hainan First and Second Foreign-Related

Civil and Commercial Tribunal, has signed contracts with more than ten well-known domestic and foreign arbitration and mediation institutions, and established standardized judicial protection contact points, circuit case-handling stations, and mediation and litigation centers in 11 key zones of Hainan Free Trade Port for a high-level, professional international commercial dispute "trinity" mechanism of mediation, arbitration and litigation to enhance the ability to resolve international disputes. In a dispute over a commissioned technology development contract involving a Korean enterprise, Hainan First Foreign-Related Civil and Commercial Tribunal introduced an expert mediator from CCPIT to conduct pre-litigation mediation with an online dispute resolution platform, and the parties were able to enjoy high-quality, low-cost professional services without having to travel. The parties eventually reached a mediation agreement and were exempted from litigation costs according to the above regulations, a demonstration of internationalization and diversity and how we provide affordable and convenient service.

III. Scientific and technological support underlines the informatization of international commercial dispute resolution mechanism

Relying on the achievements of smart courts, Chinese courts have actively promoted the whole-process online resolution of international commercial disputes, which has to the greatest extent satisfied the parties' demands for convenient, efficient and low-cost international commercial dispute resolution. On 3 February 2021, the Supreme People's Court issued the *Several Provisions on Providing Online Filing Services for Cross-border Litigants*, according to which relying on a WeChat mini-program called China Mobile Micro Court, the courts are able to provide legal services such as online filing of first instance of civil and commercial cases and video representative testimony. On 21 July 2021, the "One-stop" International Commercial DDR Platform under the Supreme People's Court went online, providing online legal services such as case-filing, mediation, evidence exchange and hearing.

Relying on IT, Hainan High People's Court created a diversified foreign civil and commercial disputes settlement platform with indigenous intellectual property rights, the ODR platform. Cooperation agreements were also signed between 13 organizations including the Hainan International Arbitration Court, the CCPIT Mediation Center and IDRRMI. More than 300 mediators from more than 10 domestic and foreign mediation institutions, such as Hong Kong Mediation Centre, Macao Mediation Association and CIETAC, have been admitted to the platform, providing online trial and mediation services for parties from more than 100 countries.

Next, we will work together with our colleagues present, pool all our efforts, continue to uphold the principle of achieving shared growth through discussion and collaboration, promote the international, diversified and informatized development of international commercial dispute resolution mechanism, and contribute more "Chinese wisdom" and "Chinese solution" to the high-quality development of Belt and Road Initiative.

Thank you!

The Innovation and Improvement of Diversified Resolution Mechanism for International Commercial Disputes in Laos

Bounkhaung Thavisack, Vice President of the People's Supreme Court of the Lao People's Democratic Republic

Lao People's Democratic Republic or (Lao PDR) applies the civil law system which depends heavily on code laws other than precedents. The People's Courts make decisions in panels. In their adjudications, judges must be independent and strictly comply with the laws. Judges are proficient to reconcile the clients.

There are two broad categories cases of people's court that are measured from amount in controversy or in other words jurisdictional amount. An area court or a zone court will exercise cases which have the amount in controversy not exceed Three-hundred millions kip, other cases will be brought to provincial court. However, most of commercial cases begin directly at the provincial court for the first instance, the High Court will act as an appellate court and the People's Supreme Court will be the court of last resort. Mostly, there are three judges sit together to hear this kind of cases.

Cases shall be conducted in open court proceedings except if otherwise provided by the laws. Defendants have the right to defend themselves. Lawyers have the right to provide legal assistance to the defendants. Representatives of social organizations have the right to take part in court proceedings as provided by the laws. Decisions reached by the People's Courts, when final, must be respected by parties, State organizations, the Lao Front for National Construction, mass organizations, social organizations and all citizens, and must be implemented by the concerned individuals and organizations.

The commercial chamber has jurisdiction to decide: Cases relating to partnership contract, cases relating to business or commercial contracts, or commercial documents such as bills of exchange or cheques, cases relating to commercial loan agreements; cases relating to enterprise bankruptcy and liquidation; cases relating to the import or export of goods, transportation of goods and insurance and cases relating to violation of intellectual property such as copyright, trademarks, pattern and any other unfair competitions in intellectual property law.

Judges of the commercial chamber have the rights and duties to study case files that are assigned to them, take the testimony of the plaintiff, defendant, and other persons that participate in court proceedings, collect the evidence in a case, mediate cases, preside over judicial tribunals and exercise such other rights and perform such other duties as provided by the laws.

Process before bringing the claim to the court:

Disputes relating to commercial dispute must be settled by the village mediation unit or other state organizations concerned. Court will not accept any commercial claim unless it goes through either village mediation or administrative mediation process.

Before filing a commercial claim in court, the creditor shall request the debtor to repay or to settle the matter through mediation. If amicable settlement cannot be reached, the creditor then may file a claim in court to request the court to instruct the debtor to bring documents or his financial statements, as well as to request that the court issue an order to seize or sequester the debtor's property to repay the debt.

If the creditor and debtor specify in the contract that the dispute resolution must be made by a mediation settlement or arbitration award of the Office of Economic Dispute Resolution, the case will be brought to the Office of Economic Dispute Resolution before filing a commercial claim in court.

For ADR, On 22 June 2018, the National Assembly passed the amended Law on Economic Dispute Resolution No. 51/NA ("Amended Law on Economic Dispute Resolution"), which came into force on 5 December 2018. The Amended Law on Economic Dispute Resolution marks the second amendment of the law since its introduction in 2005. There are notable changes demonstrating the attempt to streamline and internationalise the process of alternative dispute resolutions in Laos.

The development of law on alternative dispute resolution in Laos continually exhibits the attempt to regulate not only arbitration but also mediation. These two different methods of dispute resolution are intertwined due to the requirement that parties shall mediate before having the right to arbitrate in Laos. The Amended Law on Economic Dispute Resolution also continues to endorse this approach.

The Amended Law on Economic Dispute Resolution reflects the intention of regulators to promote mediation and arbitration as an alternative to dispute resolution through the increase of transparency and reduction of procedural timeframes. Examples include introduction of the concept of fair proceedings, requirement for mediator and arbitral tribunal to make a procedural plan, requirement for arbitral tribunal to issue a decision in three months, introduction of the process to determine the mediator and arbitrator fees by the Ministry of Justice and Government of Lao PDR, and decrease of the timeline for several procedures, including the selection of mediator and arbitrator.

Another notable development in the Amended Law on Economic Dispute Resolution is the addition of a provision on the right of foreign mediator and arbitrator to administer dispute resolution.

The Process in court: Disputes relating to commercial dispute must be settled by the village mediation unit, the request for payment of debt process and settled by the Office of Economic

Dispute Resolution before filing of a claim to the court, which mentioned above. The process of court trial for the commercial resolution and adjudication are provided in the civil procedure law. However, if the commercial dispute is related to international matters or take place in foreign countries, the claim will be made under international conventions or agreements or protocol methods according to Article 360-361 of the civil procedure law.

While the case process in court, the commercial chamber must seek a way to mediate the dispute between the litigants to help them reach an agreement. If an agreement on repayment between the debtor and creditor has been reached in front of the court, the agreement shall become enforceable immediately. The repayment must be made in one instalment but, if the debtor cannot repay in one instalment, he can repay in several instalments. However, the first instalment must not be less than one-third of the total debt.

In the present time, the commercial dispute resolution is enforced under the civil procedure law. Nevertheless, the People's Supreme Court of Lao PDR makes various attempts to strengthen regulations, technology and also enhance capacity building for judge in commercial chamber to make a proper, prompt and fair consideration and decision of the case to ensure efficiency and to ensure that no delay is caused to business operations.

The Judiciary of Tanzania
A new area for potential cooperation

Paul Kihwelo, Justice of the Court of Appeal, Principal of the Institute of Judicial Administration-Lushoto of the United Republic of Tanzania

Precis

Under the context of economic globalization and trade multi-lateralization and also in the new trends of international resolution of trade disputes countries need to look outside the box and in particular for an alternative and fast way of resolving disputes.

SOME TIPS ON THE CURRENT SITUATION

THE CHALLENGES …

Bottlenecks

The current mechanism of resolving disputes has a number of challenges even where international commercial disputes are concerned.

Some of these challenges could be resolved by resorting to online disputes resolution.

Online dispute resolution takes care of constraints like time, expense and distance.

The current mechanism of resolving disputes resolution has left an accumulated number of law suits which consumes time and resources which could otherwise be directed to other productive sectors of the economy.

Case backlog and delay is a public outcry.

SOME TIPS ON MODERNIZATION IN TANZANIA

Reforms

Slowly the Judiciary of Tanzania is overcoming the above challenges through the ongoing reforms and transformation.

The Judiciary of Tanzania is committed towards developing more accessible, just, efficient and responsive court services for both local and international commercial disputes.

High Court of Tanzania at Kigoma

High Court of Tanzania at Kigoma

High Court of Tanzania at Temeke (Dar es Salaam)

High Court of Tanzania at Shinyanga

Reforms

This is in line with the Judiciary Five Years Strategic Plan (JSP).

The JSP is implemented through the Citizen-Centric Judicial Modernization and Justice Service Delivery Project.

The Project is funded by the Government of Tanzania and the World Bank.

SOME TIPS ON AREAS FOR POTENTIAL COOPERATION

Areas for Cooperation

To enhance timely dispensation of justice in international commercial arbitration, we need to mutually work on capacity building to our respective judiciaries on Online Dispute Resolution.

We are readily available for any potential mutual cooperation in this area and any further conversation is most welcome.

As we strive to modernize our judiciary through the use of ICT we will appreciate to cooperate in any area that will assist the Judiciary of Tanzania develop a software which will translate our proceedings and decisions from English to Swahili and vice versa.

This will enhance access to justice and timelessness.

The Innovation and Improvement of Diversified Resolution Mechanism for International Commercial Dispute

Nopporn Bhotirung-siyakorn, Senior Justice of the Supreme Court of the Kingdom of Thailand

United Nations Charter

Article 2

The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

1.…

2.…

3.All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

Article 33

1.The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2.…

UNCITRAL Model Law on International Commercial Arbitration

(1985) , with amendments as adopted in 2006

United Nations Convention on International Settlement Agreements Resulting from Mediation

Article 2. Definitions

1.For the purposes of article 1, paragraph 1:

(a) … (b) …

2.…

3. “Mediation” means a process, irrespective of the expression used or the basis upon which the process is carried out, whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person or persons (“the mediator”) lacking the authority to impose a solution upon the parties to the dispute

United Nations Convention on International Settlement Agreements Resulting from Mediation

Mediation

ZOPA (a zone of possible agreement)

United Nations Convention on International Settlement Agreements Resulting from Mediation

“the mediator” lacking the authority to impose a solution upon the parties to the dispute

Suggest “Training the Mediator program”

The Innovation and Improvement of Diversified Resolution Mechanism for International Commercial Disputes

Nguyen Van Du, Deputy Chief Justice of the Supreme People's Court of the Socialist Republic of Viet Nam

Your Excellency ZHOU Qiang, President of the Supreme People's Court of the People's Republic of China,

Distinguished Delegates to the Maritime Silk Road (Quanzhou) International Forum on Judicial Cooperation,

Today, I am very delighted to be invited to attend this forum and deliver a speech on the theme of " The Innovation and Improvement of Diversified Resolution Mechanism for International Commercial Disputes". First of all, on behalf of the leadership and Adjudication Committee of the Supreme People's Court of Vietnam, I would like to thank the Supreme People's Court of China for inviting us to attend this forum. I wish all the delegates good health and the forum a complete success.

Distinguished Delegates,

In the context of globalization, international commercial disputes have increased in most countries as a result of more and more economic exchanges among countries. The need for international cooperation on international commercial dispute resolution and the reform and perfection of the dispute resolution mechanism in domestic laws of various countries has emerged as the times require.

1. Trend in International Commercial Dispute Resolution Mechanisms

(1) Diversification in International Commercial Dispute Resolution Mechanisms

The trend of international commercial dispute resolution in various countries around the world is the adoption of diversified resolution mechanisms, which mainly include the following solutions: negotiation, mediation, arbitration and litigation.

(2) The Encouragement and Preferential Application of Alternative Dispute Resolution (ADR)

In order to solve international commercial disputes effectively, maintain cooperative relations, and avoid litigation in settling international commercial disputes as much as possible, ADR methods such as negotiation, mediation and arbitration are encouraged and prioritized.

Especially in recent decades, dispute resolution methods outside the court but still closely related to it have been promoted on a global scale.

In recent years, arbitration has become the first choice of various counties around the world for resolving international commercial disputes because of its flexibility and effectiveness. Courts assist arbitration in matters such as enforcement measures and collection of evidence, and recognition and

enforcement of foreign judgments and rulings.

(3) The Enhancement of Unity and Harmony of International Commercial Dispute Resolution Mechanisms in Various Countries

Countries all over the world are pursuing uniformity and harmony of international commercial dispute resolution mechanisms, and a series of treaties on international commercial dispute resolution have been signed or ratified by countries, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York in 1958, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters signed in The Hague in 1970, and the recently signed United Nations Convention on International Settlement Agreements Resulting from Mediation ("the Singapore Convention on Mediation 2019"), as well as the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters signed in The Hague in 2019 ("the Hague Convention 2019").

(4) Strengthened Use of High-tech Means to Resolve Disputes Online

Since the beginning of 2020 till now, countries all over the world have been impacted by the COVID-19. Each country has its own way of dealing with international commercial disputes, depending on factors such as financial capacity, technological development, human resources, cultural background and flexibility of domestic laws.

2. Vietnam's International Commercial Dispute Resolution Mechanism

Vietnam's international commercial dispute resolution mechanism is diversified, including four methods of dispute resolution: negotiation, mediation, arbitration and litigation. Among them, parties are encouraged to resolve their disputes through negotiation, mediation or arbitration, before resorting to litigation. Meanwhile, Vietnamese courts are stepping up efforts to promote informatization to resolve disputes online amid the tense COVID-19 pandemic.

(1) Negotiation and Mediation

Vietnamese laws provide that negotiation is a means of commercial dispute resolution. Parties shall propose and choose their own methods and procedures for commercial dispute resolution, without interference from any authority or organization. Therefore, this is a means of dispute resolution with the most flexible formalities.

At present, there are two means of dispute mediation in Vietnam, one is through independent commercial dispute mediation centers, the other is through courts.

Independent commercial dispute mediation centers are institutions set up in accordance with the provisions of the Trade Law of the Socialist Republic of Vietnam. Due to the impact of the COVID-19 pandemic, currently such mediation centers mainly mediate commercial disputes via video conferences and the mediation fee is lower than that of the traditional method of direct offline mediation.

If the mediation is successful, a court will review and recognize that in accordance with the provisions of the Civil Procedure Code of the Socialist Republic of Vietnam.

In addition, Vietnam is studying and preparing to become a party to the Singapore Convention on Mediation 2019.

With regard to mediation conducted by courts, in addition to the mediation that is conducted in accordance with the provisions of the Civil Procedure Code, the National Assembly of Vietnam (National People's Congress) adopted the Law on Mediation and Dialogue at Court on June 16, 2020, which shall come into effect on January 1, 2021, and provides all parties with a new basis to resolve their disputes at court prior to accepting a case. In accordance with the Law on Mediation and Dialogue, mediation of disputes is conducted by a competent and experienced mediator selected and appointed by the court. The mediator appointed by the court will assist the parties to discuss and reach consensus on how to resolve their dispute. The mediation process conducted in accordance with the Law on Mediation and Dialogue is completely separated from litigation, which makes it easier to take advantage of its flexibility and simplicity. The mediation result will become legally effective after the court recognizes it.

(2) The Method of Commercial Arbitration

Commercial arbitration institutions in Vietnam were set up in accordance with the Trade Law of the Socialist Republic of Vietnam made in 2010. Currently, some arbitration institutions have established online commercial dispute resolution systems for the parties to choose.

The courts provide arbitration institutions assistance in obtaining evidence, registration of arbitration awards and taking of temporary compulsory measures.

In 1995, Vietnam acceded to the Convention on Recognition and Enforcement of Foreign Arbitral Awards signed in New York in 1958. At the same time, Vietnam made corresponding amendments to the Civil Code of Vietnam by absorbing relevant provisions of the Convention.

(3) The Method of Court Litigation

Courts play a significant role in the international commercial dispute resolution mechanism, and they are the final authority to judge in cases parties' negotiation or mediation fails, or when the parties do not choose arbitration for dispute resolution.

In 2020, Vietnam acceded to the United Nations Convention on Contracts for the International Sale of Goods signed in Vienna in 1980, and the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters signed in The Hague in 1970. In addition, Vietnam signed other treaties on judicial assistance in commercial matters with many countries.

The Civil Procedure Code of the Socialist Republic of Vietnam contains clear provisions on foreign-related commercial disputes, recognition and enforcement of judgments and rulings of foreign courts, etc.

Vietnamese courts have done a lot to build digital court and online trial platform, which are currently available for providing service of copying case materials and judgment, delivering and accepting case materials such as complaints and evidence, and electronic serving of litigation documents. In some local courts, such as the People's Court of Haiphong, online litigation has been

piloted. Meanwhile, the Supreme People's Court has also explored and researched online litigation issues in specific cases, and enacted judicial interpretation and rules for online litigation.

In the process of economic globalization, it is of great significance for Vietnam to explore and improve the diversified international commercial dispute resolution mechanism, meet the needs of practice, create a fair legal environment, effectively protect the legitimate rights and interests of foreign investors and gain the corresponding trust.

The above is my speech on the theme of " The Innovation and Improvement of Diversified Resolution Mechanism for International Commercial Disputes" for this forum. Thank you very much for listening!

Singapore Convention on Mediation and UNCITRAL Mediation Developments

Athita Komindr, Head of the UNCITRAL Regional Centre for Asia and the Pacific

UNCITRAL TEXTS ON MEDIATION

1980 Conciliation Rules

2002 Conciliation Rules

2018 Singapore Convention on Mediation /Model Law on Mediation

SINGAPORE CONVENTION ON MEDIATION

As of 16 October 2021

Year of entry into force:2020

8 Parties

55 Signatories

Asia and the Pacific Group

Parties: 4

Signatories: 21

Eastern European Group

Parties: 1

Signatories: 7

WEOG

Parties: 1

Signatories: 3

GRULAC

Parties: 2

Signatories: 11

African Group

Parties: 0

Signatories: 13

KEY PROVISIONS OF THE CONVENTION

Article 1 Scope of Application

Article 2 Definitions

Article 3 General Principles

Article 5 Grounds for Refusing

MODEL LAW ON MEDIATION

1.Amends UNCITRAL Model Law on International Commercial Conciliation (2002)

2.Adds a new section on settlement agreements, incorporating the Singapore Convention on Mediation

UPDATES FROM THE UNCITRAL 54TH SESSION (28 JUNE – 16 JULY 2021)

New or Revised Texts

1. UNCITRAL Mediation Rules
2. UNCITRAL Notes on Mediation
3. Guide to the 2018 Model Law

UNCITRAL RCAP

OPENED ITS DOORS IN 2012

LOCATED IN INCHEON, REPUBLIC OF KOREA

COVERS APPROXIMATELY 60 AP JURISDICTIONS

UNCITRAL RCAP 2021 EVENTS

Incheon, 6 – 7 Sept. Incheon Law and Business Forum, Theme: Navigating the storm: Helping MSMEs set sail with legal harmonization

HK SAR, China, 1 – 2 Nov. HK Judicial Summit, Theme: "Sustainably Adapting to a New Normal"

Seoul, 2 – 3 Nov. UNCITRAL Special Session, Theme: "UNCITRAL and Regional Developments on Arbitration and Mediation"

Seoul, 4 – 5 Nov. 10th Asia Pacific ADR Conference, Theme: "Innovating the Future of Dispute Resolution beyond 2021: The Journey Continues"

Universities in AP region mid-Sept. – mid-Dec. UNCITRAL Asia Pacific Day, Theme: "Enabling MSMEs and Assisting Economic Recovery through Legal Harmonization"