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# Promoting High-Quality Judicial Cooperation to Foster a Sound Law-Based Environment for Belt and Road Cooperation

# (Translation)

## Zhang Jun, Chief Justice, President of the Supreme People’s Court of the People’s Republic of China

**Honorable chief justices, presidents of supreme courts,**

**Justices and judges,**

**Diplomatic envoys to China,**

**Distinguished guests, ladies and gentlemen, friends:**

The Belt and Road Initiative was proposed by Chinese President Xi Jinping in 2013. Over the past 10 years, with joint efforts from various countries, this initiative has exerted a significant and far-reaching impact, continuously yielding fruitful outcomes. It has created new opportunities for global economic growth, established new platforms for international trade and investment, enhanced the development capacity and livelihood of countries involved, enriched the practices for improving the global governance system, and offered greater certainty and stability to an ever-changing world. During the opening ceremony of the third Belt and Road Forum for International Cooperation, President Xi Jinping delivered a keynote speech, where he pointed out “the Belt and Road cooperation is based on the principle of extensive consultation, joint contribution and shared benefits. It transcends differences between civilizations, cultures, social systems, and stages of development. It has opened up a new path for exchanges among countries, and established a new framework for international cooperation. The Belt and Road Initiative represents humanity’s joint pursuit of development for all.” Guided by the Xi Jinping Thought on Socialism with Chinese Characteristics for a New Era, Chinese courts are actively implementing the Xi Jinping Thought on Diplomacy and on the Rule of Law, and striking a balance between stability and progress as well as between traditions and innovation. Focusing on the ongoing pursuit of “justice and efficiency” in judicial work, Chinese courts are working to expedite the modernization of the judiciary and continuously deepen judicial exchanges and cooperation with countries involved in the Belt and Road, thus providing judicial services and guarantee for the high-quality Belt and Road cooperation.

**Firstly, creating a safe and stable social environment.** Safety is a prerequisite for growth. As staunch practitioners of multilateralism, Chinese courts seek to continuously expand the breadth and depth of judicial exchanges and cooperation, underpinned by their judicial functions to serve high-level opening-up. Up till now, China has concluded 171 bilateral judicial assistance treaties with 83 countries and has joined nearly 30 international conventions that involve cooperation in judicial assistance and extradition, which cover over 130 countries. The Supreme People’s Court of China deepens cooperation in criminal justice with countries involved in the Belt and Road. By actively engaging in international judicial assistance as well as global cooperation in anti-corruption, fugitive pursuit, and asset recovery, it has contributed to the global efforts in combatting and preventing transnational crimes. Chinese courts severely punish violent terrorism, ethnic separatism, religious extremism among other series crimes in accordance with the law, and crack down on transnational and cross-border drug trafficking, telecommunications fraud, human trafficking, smuggling, money laundering, gambling and other crimes. We handle criminal cases involving international investment, international trade, and transnational finance fairly and properly as per the law, so as to create a safe and stable social environment for the Belt and Road cooperation. Standing at a new starting point on the 10th anniversary of the Belt and Road cooperation, **Chinese courts stand ready** to deepen high-quality judicial cooperation with all stakeholders. This includes enhancing communication and collaboration in criminal judicial assistance and combating transnational crimes, so as to build a collaborative counter-terrorism mechanism in the judicial field, curb the spread of terrorism, jointly combat transnational crimes at sea, and safeguard national sovereignty, security, and development interests. Efforts will also be made to effectively strengthen the protection of human rights through judicial means, ensuring a safe and stable social environment for high-quality Belt and Road cooperation.

**Secondly, creating a fair and orderly market environment.** Focusing on enhancing connectivity, the Belt and Road Initiative aims to deepen practical cooperation, address risks and challenges faced by humanity through collaborative efforts, and achieve mutual benefits and development for all. Chinese courts uphold the principles of equal rights, equal application of the law, and equal legal liabilities for all types of market entities in litigation, and accurately apply international treaties, international conventions, and applicable laws in handling cases related to the Belt and Road Initiative, in a bid to level the playing field and maintain sound regulation in the marketplace. We give full play to the exemplary role of financial courts, harmonize the application of law in international financial cases to maintain the order of cross-border financial transactions. We have formulated and improved judicial interpretation of the Foreign Investment Law and are strictly implementing the “pre-establishment national treatment plus negative list” management system, in order to stabilize market expectations for both domestic and foreign investors. We put emphasis on judicial assistance and cooperation among en-route countries to promote efficient resolution of cross-border disputes and create a stable legal environment conducive to trade and investment. The “*Joint Initiative on Strengthening IP Cooperation among Countries along the Belt and Road*” has been implemented, which has improved the judicial protection mechanisms and methods for handling cases involving intellectual property rights, playing an active part in global intellectual property governance within the framework of the World Intellectual Property Organization. China is now the country with the highest number of intellectual property cases, particularly patent cases, and also one of the countries with the shortest trial periods. Chinese judicial cases have become an important source of rich international legal practice. 36 judicial cases have been included in the UNCITRAL Digest of Case Law, 30 intellectual property cases in the WIPO Lex Database, and 45 environmental judicial cases on the website of the UNEP. Standing at the new starting point, **Chinese courts stand ready** to join all stakeholders to abide by international treaties, respect international practices, fulfill international obligations, and continue to uphold the principle of equal protection. We will properly handle Belt and Road cooperation related cases in accordance with the law and promote trade and investment liberalization and facilitation. We will support the coordination and harmonization of regional trade laws and rules, so as to create a law-based business environment and jointly consolidate the legal foundation for high-quality Belt and Road cooperation.

**Thirdly, creating a beautiful and livable ecological environment.** Green is the defining feature of the Belt and Road cooperation. China attaches great importance to ecological progress and remains steadfast in prioritizing ecological considerations and promoting green development, in pursuit of modernization based on harmony between humanity and nature. Chinese courts are committed to protecting the environment through the strictest regulations and rule of law and imposing severe penalties on all types of environmental crimes according to the law. We have established a judicial mechanism of ecological restoration, which contributes to the collaborative efforts in reducing carbon emissions, minimizing pollution, increasing afforestation, and promoting sustainable growth to achieve the carbon peaking and carbon neutrality goals and support high-quality development and high-level protection through high-quality judicial trials. We have formulated several judicial interpretations regarding the jurisdiction of maritime cases and judicial protection of marine environment, providing strong institutional support for strengthening marine ecological protection, conducting marine governance in accordance with the law, and serving the development of the marine economy. We have gradually promoted specialized judicial practices, establishing a comprehensive national maritime judicial system, including 11 maritime courts and 42 dispatched tribunals. China has become the country with the most complete range of maritime judicial institutions which handles the largest number of maritime cases worldwide. Standing at the new starting point, **Chinese courts stand ready** to join all stakeholders to practice the concept of green development. In particular, we will promote cooperation in such areas as green infrastructure, green energy, green transportation, and green finance. We will actively fulfill international conventions, participate in global environmental governance, and work together to write splendid chapters of green development along the Belt and Road as we harness the power of the rule of law.

**Fourthly, creating a fair and efficient environment for the rule of law.** The best business environment is the one that prioritizes the rule of law. It is the prerequisite for regional economic cooperation, connectivity, as well as cross-border investment and trade. Chinese courts pay full respect to the rights of Chinese and foreign parties to voluntarily choose their preferred methods for dispute resolution. We have actively explored new paths for establishing mechanisms and institutions for resolving international commercial disputes, working to provide effective judicial services for the Belt and Road cooperation, high-level trade and investment liberalization and facilitation, and an open world economy. We have successively issued two guiding opinions to facilitate and safeguard the Belt and Road cooperation, released 40 typical cases related to Belt and Road cooperation in four batches, and improved relevant laws and rules for application to promote mutual recognition and enforcement of judicial judgments. The first and second international commercial courts of the Supreme People’s Court have been established in Shenzhen and Xi’an, and the International Commercial Expert Committee has been set up to establish a one-stop diversified international commercial dispute resolution platform that combines litigation, arbitration, and mediation. Currently, the Supreme People’s Court of China has established friendly exchanges with over 140 countries and regions, supreme judicial institutions, as well as over 20 international or regional organizations. Over 70 cooperation agreements or memoranda have been signed with foreign judicial institutions and international organizations. China has actively participated in major consultations and negotiations in the field of international law. Since 2013, we have been engaged in the review of compliance for 10 international conventions, negotiations on 11 international conventions and model laws, as well as negotiations on over 40 bilateral and multilateral judicial assistance agreements, contributing China’s wisdom to better international investment, trade, and shipping rules. Standing at a new starting point, **Chinese courts stand ready** to work with all parties to adhere to the principles of extensive consultation, joint contribution, and shared benefits, as we strengthen cooperation mechanisms in judicial assistance, case studies, and legal application and maintain a regional cooperative environment that promotes fair competition, honesty and integrity, harmony and win-win outcomes. By delivering higher-quality legal services, we strive to stabilize expectations, promote development, and bring benefits to all. Through practical legal cooperation, we aim to drive economic globalization towards a more open, inclusive, equitable, balanced, and mutually beneficial direction.

**Fifthly, creating a convenient and intelligent facilitating environment.** Nowadays, the ever-changing technologies such as the internet, big data, cloud computing, artificial intelligence, and blockchain are profoundly transforming the way we produce, live, and govern society. Chinese courts have made vigorous efforts to apply digital technology in court work, launching a series of measures to provide efficient and convenient litigation services for both Chinese and foreign parties. The online litigation service platform has been extensively promoted. This platform allows users to access main court functions online, such as case filing, mediation, service of legal documents, examination of evidence, court hearings, and enforcement of witnesses, greatly facilitating litigation for all parties involved. Proactive efforts have also been made to explore Internet justice. Internet courts in Beijing, Hangzhou and Guangzhou have handled a series of new types of cases involving the protection of virtual assets, determination of rights over big data, and copyright issues related to AI creations, serving as exemplars in resolving disputes in the digital era. Standing at the new starting point, **Chinese courts stand ready** to join all stakeholders to continue to embrace innovation-driven development and deepen research on Internet judicial rules and cooperation in global governance. We are willing to share our experience in applying IT and expediting modernization in judicial work, so as to better support the development of new technologies, new models, and new formats in industries and economies of various countries and serve the construction of the Digital Silk Road of the 21st century.

**Ladies and gentlemen, friends, distinguished guests:**

The Belt and Road Initiative is not a solo endeavor by China, but a collaborative effort involving all stakeholders. All countries are equal participants, contributors and beneficiaries on the way to achieve high-quality Belt and Road cooperation. Looking ahead, Chinese courts will join courts from various countries and international organizations to uphold the Silk Road spirit of peace and cooperation, openness and inclusiveness, mutual learning and mutual benefits, enhance candid exchanges, deepen practical cooperation, and strive for a more prosperous and promising future for high-quality Belt and Road cooperation as we harness the power of the rule of law. Together, we aim to build a world characterized by lasting peace, universal security, shared prosperity, openness and inclusiveness, as well as a clean and pleasant environment.

Thank you!

# To Give Play to the Function of the Highest Judicial Organ, and to Improve Judicial Justice and Efficiency (Translation)

## Yang Wanming, Justice, Vice President, President of the First Circuit Court of the Supreme People’s Court of the People’s Republic of China

### Distinguished representatives and guests, Ladies and gentlemen, dear friends, Good morning!

On the occasion of the tenth anniversary of the proposal of the “Belt & Road Initiative”, I am really delighted and honored to be here today in Quanzhou, Fujian, where the ancient Maritime Silk Road started, and to have dialogues and share experiences with the justices from countries along the Maritime Silk Road. Now, focusing on the topic of **“The Role the Supreme People’s Court of the People’s Republic of China (SPC) Plays in Upholding Justice and Improving Efficiency”,** I would like to brief you on the main measures and achievements of SPC in realizing judicial justice and efficiency.

The court system and trial system of China are established based on the national conditions of China and are established with the Constitution of the People’s Republic of China (hereinafter referred to as the Constitution) and the Organization Law of the People’s Courts of the People’s Republic of China (hereinafter referred to as the Organization law of the People’s Courts) as the institutional framework. China practices a system of courts characterized by ‘four levels and two instances of trials’, with nationwide courts divided into the Primary People’s Courts, the Intermediate People’s Courts, the High People’s Courts, and the Supreme People’s Courts. The Primary People’s Courts, the Intermediate People’s Courts, and the High People’s Courts are local people’s courts, in line with the administrative divisions of counties, cities, and provinces. In parallel, there are specialized people’s courts set up for the trial of specialized cases such as military courts and maritime courts. China is a unitary country with only one Supreme Court. The SPC is responsible for supervising and guiding the trial work of local courts and specialized courts at all levels throughout the country and plays a special and important role in promoting the “justice and efficiency” of the entire judicial system.

### 1.To give play to the judicial functions and uphold social fairness and justice through properly solving major cases.

According to the Constitution, and the Organization law of the People’s Courts, the SPC is the highest judicial organ of China, and the trial of cases is the crucial function of the SPC. The SPC mainly hears cases of second instance and retrial and is responsible for reviewing death penalty

cases. Although the law stipulates that the SPC can hear first instance cases with significant national influence, in recent years, such cases have concentrated in the field of international commerce.

From 2018 to 2022, the SPC accepted 149,000 cases, concluded 145,000 cases, and tried an average of about 30,000 cases annually. As the highest judicial organ, handling too many or too few cases is not an ideal state. In recent years, by improving the positioning reform of the trial level functions of the four-level courts, we have further strengthened the role of the SPC in supervising and guiding national trial work and unifying legal application standards from two aspects. First, we have improved the jurisdiction mechanism for adjudicating cases to higher courts. Even if the subject matter of a case is not significant, as long as it touches upon important public interests or has legal application guidance significance, it can be elevated to a higher level of court for trial, ensuring the typical cases can be tried by the SPC in the second instance or retrial stage. Secondly, we request that the judgments made by the SPC in handling typical cases should be retrieved by lower courts as a reference for similar cases, maintaining unified judgment standards and benchmarks to avoid similar problems from repeatedly happening and similar cases from being brought to the SPC.

### To strengthen the trial guidance and facilitate the unification of legal application

**standards through improving judicial adjudication rules.**

China is a statutory law country with 3,517 courts and more than 126,000 quota judges. To achieve judicial justice, we need to try our best to overcome the differences in the understanding of legal provisions among different courts and judges. The Constitution and the Organization law of the People’s Courts entrust the SPC with the function of supervising and guiding nationwide courts in their judicial work. Such supervision and guidance can not only rely on individual case judgment, but also be achieved by judicial interpretations promulgation, judicial policies clarification, trial mechanisms and management improvement, and other means. Here I would like to cite a case with Chinese characteristics. In accordance with the Legislation Law of the People’s Republic of China, the SPC can interpret the specific application of law in judicial work to clarify how relevant laws are applied in judicial practice. These judicial interpretations shall be submitted to the legislature for examination and filing and shall have legal effect. In the past five years alone, the SPC has formulated and issued 123 judicial interpretations, covering various fields such as financial innovation and development, environmental and resource protection, protection of minors and combating cybercrime.

In addition to judicial interpretations, the SPC also has the power to issue guiding cases. 119 cases have been issued in the past five years. These cases were from effective judgments of courts at different levels, playing a demonstration and guiding role according to the law, and courts at all levels should refer to those cases when trying similar cases. Since this year, the SPC has also set up the “Legal Answers Website”, which is an advisory platform on the application of law covering the fourth level court system in China. Since its launch less than four months ago, it has collected 60,370 legal application issues from courts at all levels, solved 37,232 difficult and complex issues,

and has effectively driven the unification of the application of law. At present, we are also actively building the “People’s Court Case Library”, gathering all kinds of guiding cases, reference cases and typical cases, forming a resource pool for inquiring and searching similar cases, promoting the unification of judgment standards, and preventing “different judgments for similar cases”.

### To promote judicial system reform, and improve the trial quality and efficiency

**through mechanism and institutional innovation.**

In recent years, the number of cases accepted by Chinese courts has continued to grow, with more than 33.7 million cases in 2022. Faced with enormous cases, how to realize the organic unity and effective consideration of judicial justice and efficiency is a major challenge confronting us. To this end, we have worked hard to remove institutional barriers affecting judicial justice and efficiency by deepening the reform of the judicial system. In allocating judicial resources, we have reformed the judge quota system, created the judge assistant system, selected more than 120,000 excellent judges from the original 210,000 judges, and concentrated 85% of the court’s staff on the front line of trial. Meanwhile, we have strengthened the guarantee of performance of duties, and comprehensively optimized the structure of trial resources. In terms of litigation system and mechanism, we have reformed the system of trying criminal cases under summary procedures and the system of leniency for guilty pleas and punishment acceptance. We promoted the reform of the system of separating complicated and simple civil and administrative cases, explored the establishment of an online litigation mechanism, accelerated the trials on the premise of ensuring the quality of cases and strictly abiding by the bottom line of judicial justice, and effectively met the people’s judicial needs for fair, efficient and convenient litigation. Since this year, Chief Justice ZHANG Jun put forward the guiding work principle as “to concretely carry out active judiciary in the new era, and to serve and safeguard Chinese modernization through modernizing the trial work”. Here, the concept of “active judiciary” means to ensure judicial justice while balancing both efficiency and effectiveness, give play to the subjective initiative of courts at all levels by strengthening the governance of litigation sources, professional guidance and judicial advice, reduce disputes and case increments fundamentally from the source, and give full play to the functional role of judicial trials in promoting national and social governance.

Distinguished guests, along the Maritime Silk Road, countries are land-sea neighbors living in proximity, and are also important partners. We sincerely hope there will be in-depth communications and cooperation between the SPC and all of you. Let us work together and contribute our wisdom and strength to better realizing judicial justice and efficiency, and to carrying forward the civilized development of the rule of law in the world.

Thank you!

# Role of Supreme Court in Safeguarding Justice and

**improving Efficiency**

## Muhammad Syarifuddin, Chief Justice of the Supreme Court of the Republic of Indonesia

### Honorable Zhang Jun President, Supreme People Court of China,

**Hon Justice Jin Yinqiang, President of Fujian High People’s Court of the People’s Republic of China, Chair of the Session,**

### Honorable Leaders of Fujian province,

**Honorable Speakers, Justices, Judges, Colleagues from around the world**

### Participants of The Maritime Silk Road International Forum on Judicial Cooperation

Good Morning, Warm Greeetings,

May peace be with us all,

It is truly a privilege to be here among the distinguished participants of the forum The Maritime Silk Road International Forum on Judicial Cooperation 2023.

### Chief Justices,

**Ladies And Gentlemen**

In the era of ever-increasing global trade and economic integration, it is very important for all to continue working together to discuss on how we can together respond to challenges faced in the area of legal and judicial matter.

Even though it is not directly related, the existence of a harmonious legal system that is able to provide support for resolving cross-border international commercial disputes is an important prerequisite for realizing the success the Maritime Silk Road Initiative as the big plan that has been mutually agreed upon.

The topic I will talk about this morning is the Role of the Supreme Court in Safeguarding Justice and Improving Efficiency. I chose this, because based on our experience, the Supreme Court of the Republic of Indonesia as the apex of judicial power in Indonesia has indeed experienced significant transformations from how this role was carried out.

As the implementer of the highest judicial power, the Supreme Court has additional functions apart from its conventional function of hearing final appeal from lower court. In conventional practices, our courts shape the laws and to certain extent create norms as well as laws through the interpretation of statutory regulations which then become precedents. This system allows Supreme Court to safeguard justices and promote efficiency indirectly through its opinion and consideration,

but nowadays the situation demands much more than this our role has developed much.

In our jurisdiction, in addition to judicial decision making function, the Supreme Court of the Republic of Indonesia also has other functions such as, the Function to conduct judicial review, Advisory Function, Supervisory Function, Regulating Function, namely regulating matters necessary for the proper administration of justice in absence of specific norms regulated by law and making regulations that is deemed necessary to fulfill procedural law and finally, the Administrative Function, namely regulating and formulating policies in the field of organization and work procedures, formulating administrative technical policies and carrying out management of state property.

### Chief Justices,

**Ladies And Gentlemen**

The increasing flow of global trade, regionalization of economy, and fast development of information communication and technology, undoubtedly force us, the supreme court to do even more, Court no longer can sit quietly at the side of the scene and run its reactive role, but it is now required to proactively anticipating what comes ahead. This is so true in our experience in relation to explore ways to safeguard justices and improve efficiency.

This is why, for the past decade, our supreme court has also implemented its rulemaking function extensively to promote legal certainty and efficiency. Every year the Supreme Court of the Republic of Indonesia issues various legal rules in the form of regulations (Regulations of the Supreme Court of the Republic of Indonesia) as well as internal regulations that have external impacts. In fact, in 2022 alone, we issue 8 Regulations and in the first semester 2023, already 5 Regulations issued.

### Chief Justices,

**Ladies And Gentlemen**

Indonesia is a quite large country with more than 276 million people inhabiting a very large archipelago, consisting of 17,000 islands. Access to justice is a real problem. To justice is delivered by more than 900 court offices, more than 8,000 judges and 32,000 court employees throughout Indonesia.

We view court modernization using information technology as the best way to bring people closer to the courts, encourage openness, and increase the efficiency of court services in terms of time and costs.

Since year 2007 the Indonesian Supreme Court has begun its long journey to implement Information & Technology in its court system. First, we established procedures for publishing court decisions online, to ensure transparency and accountability of court processes. To date, the Supreme Court’s national decision database has makes available more than 8 million decisions online, with an average of 80,000 more decisions uploaded every month. Since 2012, Supreme Court has also

introduced a case tracking system which makes the case administration process in court available online and the information can be accessed by parties in real time. This system is available in all courts in Indonesia, making it easy for the public to get complete information about the course of their case from the time it is registered to completion.

The emergence of the Covid-19 pandemic has actually become an opportunity to accelerate the transformation from conventional justice to modern justice. In 2018-2022 the Supreme Court prepared and accelerate the use of e-Court and e-Litigation which changed the administration of criminal and civil justice towards a digital system. This system allows the public to file lawsuits in the fields of civil, special civil, religious civil and state administration matters electronically from anywhere to the competent court via one single e-court portal. Parties who may be in distant and remote locations do not need to visit the courthouse in person, so the litigation process becomes much faster, simpler and costs efficient.

### Chief Justices,

**Ladies and Gentlemen**

Implementing an information system in the case management system and publishing decisions so that they can be accessed by the public is one of the Supreme Court’s efforts to maintain justice and increase efficiency. It is hoped that the use of Information Technology in aspects of case management, public access to case information and court decisions will increase the literacy of justice seekers, and eliminate information gaps, so that the public can better understand what is their right, and furthermore, be empowered to make informed decisions as early as possible about their rights and obligation.

The connection with the Maritime Silk Road initiative is that I think the transparency and efficiency that has been initiated over the years shall serve as guarantee of the Indonesian Supreme Court’s commitment to the supremacy of law and efficiency for everyone.

### Chief Justices,

**Ladies and Gentlemen**

The initiatives such as Belt and Road, and 21st Century Maritime Silk Road would significantly boost trade, investment as well as movement of people within the region, but it will also bring legal consequences as well. Borderless trade and investment will increase the likelihood of civil disputes among legal subject of different nations.

Large scale Trade will demand for a more uniform and predictable legal system across the region, to protect and provide certainty to the parties participating in the initiatives. This demand is considered as addition to the basic requirement for transparent, effective and efficient legal system and dispute resolution processes.

While unification and harmonization of law has always been difficult task, it needs to be continuously promoted, as trading activities would benefit significantly from a transparent,

consistent, and harmonized legal system.

The role of apex judiciary to safeguard justice and improve efficiency is critical to support these, and our experience shows that in addition to the traditional judicial decision making, there is also opportunities to achieve them through other ways.

Thank you Chief Justice, for your attention, and I wish you all a productive, successful forum as well as health and safety.

May Peace Be Upon You.

# The Role of the Supreme Court in Safeguarding

**Justice and Improving Efficiency**

## Bazarbekov Zamirbek, Chief Justice of the Supreme Court of the Kyrgyz Republic

### Dear Mr Zhang Jun!

### Dear participants and guests of the International Forum!

I would like to begin my report by noting that the judicial system is the backbone of the rule of law and the guarantor of legality in society, since it is the judiciary that exercises a power not inherent in other branches of State power, namely justice, the main purpose of which is to ensure the effective protection of the rights and legitimate interests of individuals and organizations.

In the Kyrgyz Republic, the court system consists of three tiers. Courts of first instance, or in other words, courts of the first level, where citizens and legal entities apply for protection of their rights. The courts of the next level are courts of appeal, which review judicial acts of courts of the first level that have not entered into legal force. And the Supreme Court of the Kyrgyz Republic acts as a cassation instance.

The functions of the Supreme Court of the Kyrgyz Republic, on the one hand, are unified in nature with the competence of lower courts - it is the administration of justice, on the other hand, have peculiarities due to the leading function of this body.

This explains the essential role of the Supreme Court in safeguarding justice and improving efficiency, which is predetermined by its special status and special place in the system of courts, as the Supreme Court is one of the pillars in the system of separation of powers. It is a unique judicial institution with an exceptional degree of influence. Only the Supreme Court exercises special powers not possessed by the courts of first instance and appeal.

Thus, according to the Constitution of the Kyrgyz Republic, the Supreme Court is the highest body of judicial power. It carries out cassation review of judicial acts issued by the courts of first and appellate instances, ensuring the final resolution of legal disputes. Thus, the Supreme Court, being the last judicial instance, is the guarantor of the protection of the rights, freedoms and legitimate interests of citizens enshrined in the Constitution of Kyrgyzstan and their restoration in case of violation, and the decisions of the Supreme Court play an important role in maintaining public confidence in the legal system.

It is difficult to overestimate the role of the Supreme Court, or rather its Plenum, in the formation of uniform judicial practice in our country so that the Constitution and other normative legal acts of the country are applied correctly and uniformly by all courts throughout its territory.

At the same time, the explanation of the Plenum of the Supreme Court is given in the form of a statement, which is based on the generalization of court practice, analysis of court statistics and court decisions, and is binding on all courts and judges of the Kyrgyz Republic.

Clarifications of the Plenum of the Supreme Court and the development of a unified judicial practice are necessary to improve the efficiency of justice, as they are based on the requirements of the law, contribute to the correct understanding and application of the rules of law, ensure a uniform approach of courts in resolving disputes on similar situations and help to avoid miscarriages of justice. Also, judicial practice always serves to achieve the main goal of justice - the adoption of a lawful and well-founded judicial act.

The organization of training for judges plays an important role in improving the efficiency of justice. The Supreme Court of the Kyrgyz Republic has a Higher School of Justice, the main task of which is to train and improve the qualifications of our country's judges by organizing training seminars on a regular basis. And here I would like to recall the words of the great Chinese philosopher and thinker Confucius, who said that "Success depends on prior preparation, and without such preparation, failure is bound to happen". Therefore, the Supreme Court pays great attention to the training and education of judges, as it is necessary to ensure a high level of legal competence and professionalism of judges, and the quality of their administration of justice.

In addition, the highest judicial body works to counter corruption in the judiciary. It promotes the ethical behavior of judges and their adherence to high standards of integrity.

In order to ensure and improve the efficiency of justice, the Supreme Court is actively working on the digitalization of the judicial system. Undoubtedly, the level of digitalization of our justice system cannot compare with that of the People's Republic of China, which is a model of the latest achievements in the development and implementation of modern digital solutions in the judicial infrastructure. In this area, we are only at the initial stage. However, as the philosopher Confucius said: "No matter how fast you move towards your goal, the main thing is not to stop”. Therefore, work towards this direction is on the way, and we hope that eventually we will be able to achieve a complete transition to digitalization and electronic court proceedings.

In addition, our country has developed information on the activities of the courts through electronic sources. The website of the Supreme Court of the Kyrgyz Republic publishes all information on the activities and organization of not only the highest judicial body, but also information on local courts, lists of cases to be heard, texts of judicial acts, resolutions of the Plenum of the Supreme Court, and generalizations of judicial practice. At the same time, judicial acts, in order to protect the personal data of litigants and not to violate their rights, are published only after depersonalization of their personal data.

Another important aspect to be noted is the Supreme Court's co-operation with civil society institutions and the media in order to provide objective, reliable and prompt public information on the work of the courts. In this matter, the Supreme Court proceeds from the premise that justice must not only be done, but people must see that it really exists.

Thus, it is safe to say that the Supreme Court of the Kyrgyz Republic is the most important institution in ensuring the rule of law, protection of individual rights, effective and fair administration of justice in Kyrgyzstan. Its decisions and actions have a significant impact on the legal situation in the country. In other words, the role of the Supreme Court is key in shaping the legal landscape and ensuring the effective and fair administration of justice in Kyrgyzstan. All of this ultimately contributes to the continuous development and improvement of the judicial system and the efficiency of justice in the country.

Thank you for your attention!

# The Role of the Supreme Court in Safeguarding Justice

**and Improving Efficiency**

## Gibuma Gibbs Salika, Chief Justice of the Independent State of Papua New Guinea

### Introduction

It gives me great pleasure to have been invited to speak at this Maritime Silk Road (Quanzhou) International Forum on Judicial Cooperation. The hospitality that my delegation and I have received has been warm and we are very happy to be here with you today.

As Chief Justice of the Independent State of Papua New Guinea, I am privileged to lead our Judiciary which handles access to justice for our country of approximately 10 million people including adjudication of criminal and civil matters in the National and Supreme Courts.

The Supreme Court of Papua New Guinea is the final appellate court whose decisions become precedent and binding on the lower courts. As such, it has a significant role in its impact and on justice. Whether it is interpreting a constitutional provision or making a determination on an election petition or a criminal conviction, the powers of the court are clear and relevant to upholding the rule of law in our country.

The Jurisprudence of Papua New Guinea has developed over the decades and in my estimation assures court users that there is certainty in law when matters are heard in our courts. The independence of our judiciary provides for the focus of the judiciary being able to fully safeguard justice with the other two branches of government comprised of the legislative and executive recognizing this in supporting the rule of law in Papua New Guinea.

### Safeguarding Justice

Our stability as a country is based on fundamental values that we as a people share which are enshrined in our Constitution and for which the courts act as guardians in upholding to further protect the rights of all within Papua New Guinea. It is noteworthy that ensuring that there is public confidence in the Supreme Court is crucial to validating justice1.

Accessibility to the Supreme Court by litigants and being able to get final decisions with an acceptance of that decision informs on the notion of a fair trial2. The focus of our courts in providing the services required by our people to address disputes while also promoting the protection of rights helps to build the value proposition that one can find justice through bringing matters to court.

In developing countries such as Papua New Guinea, there is a constant tension between handling disputes in our traditional ways versus using the court system. In this regard, our Supreme

1.https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2108&context=faculty\_scholarship 2.https://academic.oup.com/book/6558/chapter-abstract/150513446?redirectedFrom=fulltext

Court works conscientiously to adjudicate matters in the most reasonable time with regard to our Supreme Court rules and procedures, which indicates to parties that coming to court to address disputes is the best way to attain justice.

For many of our people especially in the remote areas of Papua New Guinea where access to justice has been challenged due to the lack of government resources to put in place infrastructure, the Supreme Court has recognized its importance and relevance to safeguarding justice even for such locations.

In Papua New Guinea, the Supreme Court Act provides for the Court’s powers and some of its procedures on an appeal from the National Court and gives power for a National Court judge to refer and the Supreme Court to consider questions of law. Other procedures on appeal are contained in rules made by the judges of the Supreme Court. The Constitution gives the court general power to make rules of court (Constitution section 184). The Supreme Court’s additional powers to review decisions of the National Court (when an appeal is not available) and to consider references on constitutional issues, are given by the Constitution itself. Procedure in those cases is governed by Rules made by the Judges of the Supreme Court. The Supreme Court is the highest court in Papua New Guinea. It is a court of record, and must therefore keep a record of the proceedings done before it and give a written decision on every proceeding3.

Given that the decisions of the Supreme Court are final it is important that we get it right. We do this to the best of our ability as it directly affects justice for those who are in our courts.

### Efficiency

Our Supreme and National Courts have moved to a paperless system. This is to improve efficiency in our case management process and it has also been shown that courts that rely on paper are at high risk and more vulnerable to disasters4. Being able to have our Judges dispose of cases in a more efficient and effective manner supports good judicial administration.

It is important that there is transparency and accountability in our courts and so by implementing e-Judiciary services we have been able to improve in court performance. This digital age has transformed the way courts do business and underpins the requirement that an effective and efficient judiciary can no longer operate in a paper-based system given the volume and complexity of matters which require quick response times in the case management process.

Access to justice manifests itself in how well courts operate and overcoming physical barriers including remote area locations5. In Papua New Guinea with our e-Judiciary program it is intended for the Supreme Court to be more efficient and user friendly.

Our legal system is based on the common law and stare decisis is a legal principle which directs courts below to be bound by previous decisions of the Supreme court which apply to the case

1. [https://www.pngjudiciary](http://www.pngjudiciary.gov.pg/supreme-court%22%20%5Cl%20%22%3A~%3Atext%3DRole%20of%20the%20Supreme%20Court%26text%3Dreview%20decisions%20made%20).gov[.pg/supreme-court#:~:text=Role%20of%20the%20Supreme%20Court&text=review%20decisions%20made%20](http://www.pngjudiciary.gov.pg/supreme-court%22%20%5Cl%20%22%3A~%3Atext%3DRole%20of%20the%20Supreme%20Court%26text%3Dreview%20decisions%20made%20)

by%20the,the%20Constitution%20or%20not)%3B

1. https://anti-corruption.org/wp-content/uploads/2017/05/RBAP-DG-2016-Transparent-n-Accountable-Judiciary.pdf 5.https://heinonline.org/HOL/LandingPage?handle=hein.journals/nujsjlry8&div=16&id=&page=

that they may be presiding over in their court. This creates certainty of law and when one examines

efficiency and how the Supreme Court contributes to this, this legal principle has relevance.

As our Supreme Court develops more legal tests which are applicable to various areas of law which are argued before the courts, it assists the courts to be able to quickly apply a remedy without delay.

### Conclusion

Our Supreme Court has far-reaching powers and impact on the day-to-day life of the people of Papua New Guinea based on decisions made in court. We continue to strive for methods and procedures to improve our efficiency and effectiveness as a court to improve access to justice. The Judges continuously work in improving competency throughout the judiciary and the court staff to meet the needs of court users in having matters heard in a reasonable time while making decisions.

The challenge that judiciaries face is to improve efficiency and deliver quality judgments that parties accept are fair and transparent. The process by which court decisions are reached are relevant to the public having confidence in the judicial system. I am encouraged through attending this International Forum that the discussions we have on this subject will further enlighten and assist us as Judges on how we can improve our courts to be more responsive to the needs of our stakeholders while developing better and more efficient ways of conducting court business.

There are many challenges which will continue to come our way in the Judiciary, however, we are committed to meeting those challenges. As we deliver on our mandate to improve access to justice for the people in our country and provide justice through our courts, I am of the view that this will strengthen our resolve in safeguarding Justice and improving efficiency.

Thank you listening to me and for being attentive in my brief intervention.

# The Role of the Supreme Court in Safeguarding

**Justice and Improving Efficiency**

## Satiu Simativa Perese, Chief Justice of the Independent State of Samoa

### Honourable Zhang Jun, Chief Justice, President of the Supreme People’s Court of the People’s Republic of China; esteemed Judges of the People’s Republic of China,

**Dàjiā hǎo**

* 1. I also extend warm greetings to distinguished delegates of the “Belt and Road” community of nations, gathering here with the common purpose of enhancing judicial exchange to consolidate a stronger consensus on legal cooperation.
	2. Allow me to share an observation; the key to building consensus that leads to a consolidation of like-minded cooperation, requires us to familiarise ourselves with each other’s legal systems. That is what we from Samoa intend to take home from this important conference; a greater understanding of the philosophical bases of the legal systems of other Forum member countries.
	3. To assist with your understanding of the Samoa legal system, I begin with a word on the nature of the Supreme Court in Samoa; this contextualisation leads to a discussion of significant developments in constitutional law in my country in the last few years.

### What is the Supreme Court in Samoa?

* 1. In common law countries, the Supreme Court is generally the Apex court – the highest court in the land. In Samoa, Supreme Court is the guardian of fundamental rights protected and preserved in our founding document – the Constitution of the Independent State of Samoa 1960 – Samoa’s supreme law (“the Constitution”). A person must go to the Supreme Court to enforce their right to life; right of personal liberty; freedom from inhumane treatment; freedom from forced labour; right to a fair trial; rights concerning criminal law; freedom of religion; rights concerning religious instruction; rights regarding freedom of speech; assembly, association, movement and residence; rights regarding property; freedom from discriminatory legislation. Before the constitutional change, that I am about to discuss, no other Court in Samoa has first instance power to grant relief.
	2. Recent amendments to the Constitution affect the Supreme Court’s role under the Constitution. There are now a significant number of disputes involving matters of customary land and chiefly titles, matters of great importance to the everyday conduct of life are no longer the subject of the Supreme Court’s oversight.
	3. Samoa has two legal systems – the Civil and Criminal jurisdiction administered by the Supreme Court; disputes relating to customary land and chiefly titles are the subject of an independent legal system administered by the Land and Titles Court. Both legal systems may independently hear and determine claims under the Constitution. In other words, as the Land and

Titles Court is not bound by decisions of the Supreme Court on the meaning of the Constitution; the Land and Titles Court can apply its own interpretation of the Constitution. The central difficulty is that where there are different interpretations of the Constitution, as between the two jurisdictions, how might these conflicts be resolved? There is no clear answer. Our country is unique as a common law country, from a legal perspective; the bifurcation of the once solitary legal system is in my respectful view the most significant constitutional development since independence, in 1962.

* 1. The Supreme Court in addition to safeguarding and protecting fundamental individual rights and liberties protected under the Constitution, has also jurisdiction to determine civil disputes and criminal proceedings.

### How does the Supreme Court safeguard justice?

* 1. My country has a population of only 200,000 people; many more live as part of the Samoan diaspora throughout the world. Our country by size and population is small, certainly when compared with the 15 million people who live in this UNESCO World Heritage city, Quanzhou – the starting point of the ancient Maritime Silk Road. However, as small as we are as a nation, we face the same issues that challenge the most populous and mightiest of nations. These challenges might be identified by asking these rhetorical questions - What is justice? How are competing interests as between citizens and as between citizens and the state resolved?
	2. In Samoa, all roads lead to the Constitution. The Constitution establishes three arms of government – the Parliament, Executive, and the Judiciary. In today’s independent Samoa the safeguarding justice means the application of the Constitution. It is the Supreme Court’s role to interpret the meaning of the Constitution. Further, it is within the Supreme Court’s power to declare void any law that is inconsistent with the Constitution, according to its extent. The Supreme Court has carried out these functions for decades. In recent years, the Supreme Court has been asked to decide difficult constitutional questions; in answering them the Supreme Court has interpreted the Constitution as having a central role in the maintenance of the rule of law. I would like to make reference to several recent reported decisions to demonstrate the last point.
	3. First, the case of FAST Party v Attorney General [2021] WSSC 24, concerned the scope of the Head of State of Samoa’s claim to have powers not specifically provided for in the Constitution but that inhered the office of the titular head of government. The powers were advanced to justify the setting aside of the results of the 2021 General Election, and issuing of writs for a fresh General Election, neither action provided for under the Constitution. The Supreme Court rejected the Head of State’s claim. The Court affirmed the supremacy of the Constitution as the supreme law of Samoa, and the alleged powers were unconstitutional; every person was equal before the Constitution and therefore the law. The second decision is Attorney General v Latu [2021] WSCA 6, where the Supreme Court was asked to determine the circumstances by which a government could be formed following the holding of a General Election. The determination affirmed the Supreme Court’s commitment to interpret the Constitution to give it the ability to deal with circumstances

that had not been reasonably anticipated by the constitutional framers. This meant, a majority of the Legislative Assembly members elected in the 2021 General Election were able to form a democratically elected government, and reading the oath of office, as taken by a person suitably qualified to take oaths, in a marque tent outside of Parliament (which had its doors ordered locked by the outgoing caretaker government). The Head of State who would otherwise have administered the oath of office to the Speaker of the Legislative Assembly was absent that day – 24 May 2021. Next are two decisions - Malielegaoi v Speaker of the Legislative Assembly [2022] WSSC 35 (Nos.1), which involved an analysis of fundamental rights protected under the constitution and the extent to which they could be ignored by the Legislative Assembly’s decisions pursuant to its rules of internal procedure (“standing orders”). The issue involved the process by which a member might be suspended from Parliament, and whether suspended members were entitled to be heard on penalty, in accordance with the constitutional right to natural justice. There then is the associated decision in Malielegaoi v Speaker of the Legislative Assembly [2023] WSSC 37 (Nos.2). One of the issues in this matter concerned the legality of internal standing orders and the alleged breach of a member’s constitutional right to free speech. The Supreme Court held the standing orders were in breach of the constitutional right of free speech, and it declared the standing orders void, to the extent of its inconsistency with the Constitution.

* 1. These decisions highlight the Supreme Court’s role in reinforcing the Constitution as the supreme law of Samoa, and which does not permit of other sources of power. A Constitution that must be given a generous interpretation to avoid the austerity of tabulated legalism; this means having a respect for traditions and usages which have given meaning to the language, and of an approach with an open mind. Our approach in Samoa is to give primary attention to the words used, whilst guarding against any tendency to interpret them in a mechanical or pedantic way.
	2. The esteemed members of the judiciary of the People’s Republic of China, and honourable judges and delegates, are likely to recognise the issues in the Malielegaoi (Nos 1 and 2) concern the delicate relationship between two arms of a Westminster styled government. The decisions show that where the state’s actions or actors are in breach of or frustrate the operation of the constitution, the Supreme Court will interpret the Constitution in a manner that will protect the principles of democratic government and the institutions of government. Further, the Parliament is to be attributed with the intention to comply with the constitutional rights preserved and protected under the Constitution.
	3. There are other ways by which the Samoan Supreme Court seeks to safeguard justice.

These include:

the issue of reasoned decisions in a timely way; the presumption that hearings are held in public; initiatives that promote access to justice;

managing and addressing judges’ well-being through the appropriate allocation of workload

and judgment writing time.

### How does the Supreme Court improve efficiency?

* 1. The Court has a strong commitment to efficiency. Some examples of our ongoing work include the revision of procedural rules; review of case management procedures; and the implementation of an electronic document tracking system that will enable a better tracking of files, that, up until now, have been manually administered. It is hoped the new tracking system will also give better insight into the operations and delivery, of the Court’s core functions; indeed, justifying adjustments and improvements as may be necessary.
	2. Finally, I would like to express my sincere gratitude to the People’s Republic of China for generously providing for us our current court house located at Tiafau, Mulinu’u, the seat of Samoa’s government. The building is going on 15 years old, and it has had a fair amount of use in its time. It is a landmark in Samoa as the place for the administration of justice.
	3. We extend our warmest thanks for your continued support of our nation and its judiciary. On behalf of the Samoan judiciary, I also offer our very best wishes to you all for your work and continued good health.

Xie Xie.

### Appendix: The Samoan delegation to the Maritime Silk Road (Quanzhou) International Forum on Judicial Cooperation 26 October 2023, in Quanzhou, People’s Republic of China.

1. Please let me introduce to you the other members of Samoa’s delegation. If I could first introduce His Honour Justice Clarence Nelson; he is the senior Supreme Court Justice and has a long and distinguished legal career as both a lawyer and jurist. Justice Nelson is Samoa’s candidate for a permanent position on the International Criminal Court; we respectfully consider his exemplary leadership and keen intellect, inspired by his Pacific heritage, may be used to bring a new Pacific involvement, and fresh perspectives, to the protection of human rights around the world. The third Judge from Samoa is His Honour Justice Leiataualesa Daryl Clarke. His Honour is an experienced Supreme Court Justice, with an excellent reputation in academia, most recently obtaining his Masters in Law from Auckland University, New Zealand, with first class honours. Our delegation further includes the Registrar of the Supreme Court of Samoa, Mr Papalii John Afele who is on course to graduating with an undergraduate law degree next year; and my wife, Mrs Saveatama Francine Meredith-Perese (who, after enduring me speak endlessly about the law, probably deserves to be awarded an honorary law degree).
2. We are all very honoured to be here, and we thank the Government of the People’s Republic of China for this opportunity. Xie xie.
3. We acknowledge His Excellency, Ambassador Zhou of the Embassy of the People’s Republic of China in Samoa, for his Embassy’s generous support for and funding of our delegation’s travel and accommodation. I also acknowledge the support of His Excellency Luamanuvae Mariner, the Samoa Ambassador to the People’s Republic of China, and Zhou Lingling, the Director of International Cooperation Department of the Supreme People’s Court, for outstanding support given to our delegation.

# From the Policy of the Thai President of the Supreme Court to the Safeguard and Improvement of the Justice

## Chaiyos Oranonsiri, Presiding Justice of the Supreme Court of the Kingdom of Thailand

Thank you very much. Good morning. I am very glad to be here today. I would like to share with you something about my knowledge and experience concerning the “Maritime Silk Road”. I choose to talk about it through the topic of the role of the Thai Supreme Court in safeguarding and improving justice efficiently since the present President of the Thai Supreme Court has just declares her vision and launches her policy at the very first day of this month. For me, it seems suitable to explain her policy to you under this topic.

For the Judicial court, there are three tiers dealing with the cases, namely, the Courts of First Instance, the Courts of Appeals and the Supreme Court. One of the Court of First Instance for Specialized Cases is the Central Intellectual Property and International Trade Court, or the CIP&ITC in short. The judgements from this Court will be appealed to the Court of Appeals for Specialized Cases and the Supreme Court respectively. From the top of my head, according to the Maritime Silk Road, nowadays there are the Carriage of Goods by Sea Act B.E. 2534 (1991 A.D.), the Multimodal Transport Act B.E. 2548 (2005 A.D.) and the International Carriage of Goods by Road Act B.E. 2556 (2013 A.D.) in Thailand. All of them are regarded as the International Trade laws, therefore, they are under the jurisdiction of the CIP&ITC. But I will not go in depth about these domestic laws. I will talk about how the policy of the President of the Supreme Court or the role of the Supreme Court will give the impact to these laws.

The policy of the President of the Thai Supreme Court has been divided into four parts. They are dependability, fairness, equality and modernization. In fact, all of these have been available in Thai Judicial branch for a long time, but the President of the Supreme Court prefers to concentrate on them seriously in her term. Firstly, the court will act as a dependable place of refuge for people encountering or disputes such as to simplify several measures for the equal access to justice, and to collaborate with both public and private sectors to enhance the efficiency and expediency of case adjudicate and judgement enforcement. Secondly, the court will exercise the judicial power with integrity and fairness such as to adjudicate cases with fairness, transparency and impartiality. Thirdly, the court will render justice with equality and non-discrimination so to ensure equal access to justice for all individuals with uniform standards and procedures. Finally, the court will assume a leading role in the adoption of advance technology and enhancement of knowledge in administration of the court and adjudication of cases so to provide necessary technology in helping the courts services and particularly to support the Justices or the Judges to improve their knowledge and experience from abroad. That is why I can be here today to share my knowledge and experience with all of you. The parties, especially the foreign parties, will be ensured that, by this role of the Supreme Court, they will receive the safeguard and the improvement to justice efficiently.

To conclude my presentation, I would like to talk about the knowledge I receive here in other dimensions. Inside this room, surely, it is very significant that I can share the knowledge and the experience with all of you. Truly, I will bring this fruitful information back to work it out in my country. I open my mind and receive many useful ideas from different points of views. Therefore, I may choose some of your better measures and give the information to the Judicial Executives in order to mix these measures appropriately into my society. Outside this room, I have a good chance to meet with the lovely Chinese people and this beautiful city, also, how to make a good bargaining in business. The knowledge outside the room sometimes is much more important. It helps me understanding why their laws and judicial systems are, through the people and cultures. Last but not least, I would like to thank for this program. Apart from the invaluable knowledge, this is the good opportunity for me to know all of you who come from several parts of the world. I may one day send you an email to ask your idea about the problem I face in my work. Please keep in touch and the judicial cooperation will be reached sooner or later. Thank you very much.

# The Role of the Supreme Court in Safeguarding

**Justice and Improving Efficiency**

## Gladys María Gutiérrez Alvarado, President of the Supreme Court of Justice of Bolivarian Republic of Venezuela

**Greetings, both personally and on behalf of the judges of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, extended to the esteemed Supreme People's Court of the People's Republic of China. A special acknowledgment goes to its president and all members in attendance at this crucial International Forum.**

We extend our gratitude for the warm welcome and institutional reception accorded to the delegation from the Venezuelan Supreme Court. This reception solidifies our shared commitment to cooperation and fraternity, aligning with the foreign policy of our nation led by the Head of State, President Nicolas Maduro. We particularly emphasize the significance of the China-Venezuela Comprehensive Strategic Partnership, aiming to foster continual and progressive benefits in the realms of justice, as well as in legal, geostrategic, scientific, technological, commercial, economic, and social domains. Our collective goal is to cultivate a more balanced, efficient, and effective justice system for both nations.

It is worth reiterating, before this millenary and virtuous Asian people who have contributed significantly to the well-being of humanity under the wise leadership of President Xi Jinping, that the doors of the Venezuelan High Court are equally open to the judicial bodies of the People's Republic of China, its authorities, and all present. We always welcome and appreciate your pleasant visits to our country.

The collaborative endeavor to construct the 21st Century Maritime Silk Road underscores the imperative of elevated international judicial cooperation. This collaboration aims to fortify our justice systems, rendering them more efficient and pertinent in delivering fundamental services to our societies. The ultimate goal is to ensure peace and coexistence on a global scale.

We find it fitting to delve into various aspects concerning the distinct Chambers of the Supreme Court of Justice, with a specific focus on its Constitutional Chamber. Concluding our discourse, we put forth proposals aimed at solidifying synergies with the judiciary of this Asian power. These efforts are geared towards further enhancing Venezuelan judicial administration and fostering the attainment of shared institutional goals in the noble pursuit of justice.

In this esteemed International Forum, we offer a concise overview of the normative framework surrounding the Supreme Court of Justice, positioned as the highest Court of the Republic. We shed light on its endeavors for the human and social development of the Venezuelan people, manifested through the jurisprudence emanating from its various Chambers. The Venezuelan Judiciary, in essence, carries out a multifaceted and engaging judicial function—one that is both specialized and adaptable, evolving dynamically alongside society and the law. This evolution is intricately entwined with sustained popular participation, all conducted in unwavering adherence to the law.

The Venezuelan Constitution, heralded as an exemplar of new Latin American constitutionalism, embraces the model of a Democratic and Social State of Law and Justice. This framework facilitates judicial activism that has played a pivotal role in revitalizing institutions and shaping a novel legal system to ensure the efficacious operation of a social, participatory, and protagonist democracy. In this paradigm, the rights and guarantees of citizens hold the status of immediately enforceable legal claims, imposing obligatory compliance on all branches of the Public Power.

The principle of progressive protection of human rights and guarantees is enshrined in our Fundamental Text. The State is obligated to ensure, without any form of discrimination, the respect, enjoyment, and irrevocable, indivisible, and interdependent exercise of these rights for all individuals. The international human rights treaties, duly signed and ratified, hold a constitutional hierarchy. Their provisions, in conjunction with constitutional norms and general principles of law, constitute an integral part of the constitutional framework—a guiding set of principles for the interpretation and application of the legal system by all judges and legal interpreters.

In our constitutional model, the Judiciary has transcended its role as a mere resolver of individual conflicts. It has evolved into the paramount national arbiter, safeguarding social peace. Through constitutional jurisdiction, it emerges as an institutional force propelling the development of the political and social program outlined in the Fundamental Text. Since 2000, jurisprudence has demonstrated advancements in the interpretation, promotion, and protection of civil, social, political, and economic rights, among others. The Judiciary, upholding impartiality and independence in its functions, plays a pivotal role in shaping the legal landscape.

It is pertinent to highlight the Constitutional Chamber and its function of protecting the national Constitution, given its power to rule on interpretations of the content or scope of constitutional norms and principles, binding on all the courts of the Republic and the other Chambers of the Supreme Court.

The constitutional jurisdiction has the authority to consider various actions and claims, including cases for constitutional protection, popular actions safeguarding collective and diffuse interests, actions for constitutional interpretation, and reviews of sentences to ensure constitutionality across all courts. Additionally, it possesses the power to assess the performance of public bodies and, when necessary, prompt them to act in a specific direction through the declaration of the unconstitutionality of any omissions. This emphasizes its pivotal role in upholding constitutional principles and guiding the effective functioning of public authorities.

Article 253 of our Constitution asserts that the authority to administer justice originates from the citizens and is executed in the name of the Republic by the authority of the law.

Access to justice is explicitly recognized as a fundamental right in Article 26 of the Constitution. The administration of justice is not merely a state power; it is deemed a public service that operates with transparency, efficiency, and accessibility (Articles 26 and 257 of the Constitution).

Specifically addressing the Supreme Court, Article 267 of the Constitution stipulates that it is entrusted with the direction, governance, and administration of the Judiciary. Additionally, it holds the responsibility for the inspection and supervision of the courts throughout the Republic and the Public Defenders' Offices.

The Constitution has established the Executive Directorate of the Judiciary (Article 267), this administrative body operates within the structure of the Supreme Court of Justice, tasked with providing operational support to ensure the seamless administrative functioning of all courts and judicial offices at the national level.

The Supreme Court of Justice operates through various chambers, including the Plenary Chamber and the Constitutional, Political-Administrative, Electoral, Civil Cassation, Criminal Cassation, and Social Cassation Chambers. The Social Cassation Chamber encompasses those dedicated to agrarian, labor, and children's and adolescents' cassation. Each of these courts fulfills the highest judicial function within its respective jurisdiction, ensuring justice for the entire society. Notably, they contribute significantly to jurisprudence, particularly in sensitive areas such as the protection of children and adolescents and the realm of gender justice, for which specialized courts exist.

The actions of the Constitutional Chamber have played a decisive role in safeguarding national sovereignty, both within and beyond the Republic. This is particularly evident in the face of disproportionate imperial aggression, executed and thwarted coup attempts, and even challenges arising from actions within the institution that could undermine the validity of the national Constitution. The Chamber's significant contribution lies in its role as an arbiter of constitutional justice, ultimately working towards ensuring peace.

At the Venezuelan Supreme Court, we have crafted and implemented the Strategic Plan of the Judiciary. This plan upholds organizational principles of transparency, efficiency, public service, and development, aligning with the overarching values that should guide the various branches of the Venezuelan Judiciary. In harmony with the plan's key pillars, including Jurisdictional Management, Administrative Management of the Judiciary, and the New Judicial Public Servant, we have a comprehensive roadmap that dictates the trajectory and direction of judicial management at all levels throughout the country.

In pursuit of judicial efficiency, our management has outlined the organization of numerous legal assistance events in penitentiary facilities across various regions of the country. These events encompass judicial actions like preliminary hearings, trial commencements, review of measures, and the provision of humanitarian measures. Additionally, alternative methods for serving sentences, as well as remissions for study and work, are considered—all executed in collaboration with other entities within the Justice System. This underscores our commitment to implementing a strategic plan aimed at alleviating congestion in pre-trial detention centers.

The Venezuelan judiciary has steadfastly pursued a multifaceted approach to bring justice closer to the people, aiming to enhance efficiency in judicial management. This commitment has resulted in several notable achievements, including, but not limited to:

1. **Access to justice with works and technology:** Several plans and strategies have been implemented to ensure effective access to justice for all inhabitants of the Republic. This includes not only the enhancement of courtroom spaces and working conditions for judicial staff nationwide but also the implementation of various plans for the digitization and systematization of processes. One notable initiative is Ruling No. 1,248 of December 15, 2022, by the Constitutional Chamber. This ruling deemed the progressive use of electronic signatures in writs, proceedings, decisions, and actions within a judicial file viable. This applies to cases in progress before any court in the Republic, involving users of the Public Service of the administration of Justice and officials of the Judiciary. It is, however, contingent upon compliance with the requirements outlined in the applicable regulations.
2. **Single Agenda:** A computerized tool that links the criminal courts, the Public Prosecutor's Office and the Public Defender's Office through an automated agenda in which the hearings to be held by the criminal courts are set and recorded in order to avoid the deferral of cases due to the absence of one of the parties involved in the criminal process, which contributes to greater efficiency in the administration of justice.
3. **Communal Justices of the Peace:** These seek to resolve conflicts through various alternative methods to traditional justice, directly in the communities. They contribute to the preservation of harmony in family relations, in neighborhood and communal coexistence, as well as in the resolution of matters arising from the exercise of the right to citizen participation, which translates into a lower number of lawsuits to be heard by the ordinary courts of the Republic.
4. **Mobile Courts:** Program of buses fitted out as courthouses. A social and strategic symbol of the Supreme Court of Justice, directly engaging with the community through a close inter-institutional and social relationship, with a special emphasis on Communal Councils. This initiative not only grants access to free justice but also provides community legal advice.
5. **Municipal Courts:** These courts handle procedures for prosecuting less serious offenses, capped at a maximum of 8 years' imprisonment. This approach aligns with the principle of trial in liberty, embracing the new facet of restorative justice. These specialized courts play a crucial role in decongesting the caseload of other ordinary criminal courts and alleviating prison overcrowding. Judges in these courts often opt for sentences involving community work for the benefit of the community, transforming penalties for less serious offenses into tangible instruments or projects that can contribute to the well-being of the community.
6. **Houses of Justice:** These are comprehensive institutions within the justice system, serving as a harmonious space where the Judiciary, the Public Prosecutor's Office, the Public Defense, and State security officials coexist. Operating as an integrated system, their primary objective is to streamline and expedite all criminal proceedings involving these State entities.
7. **"TSJ goes to School":** A socio-educational Program that aims to enhance social participation in the justice system, strengthening the peace education of children and adolescents through the provision of information such as the mission, vision, structure and functioning of the Judiciary and conflict resolution in the school environment, through interactive and informative activities.
8. **Social Observatory of the Judiciary:** This unit is dedicated to advancing processes of observation, oversight, social control, and socio-legal investigation of judicial management. It operates in accordance with the principles of popular participation outlined in the Constitution and the law. The overarching goal is to enhance and strengthen a justice system that is closely aligned with the needs and perspectives of the people it serves.

Despite facing economic challenges that have slowed down the integration of technologies and process technification, these accomplishments have been realized. Since at least 2014, the Bolivarian Republic of Venezuela has contended with unilateral coercive measures (UCM) and other restrictive or punitive actions imposed by authorities of countries pursuing policies contrary to international public law. The objective of these measures is to impede and obstruct the smooth functioning of the Venezuelan economy.

Fortunately, Venezuela has found support and a sense of complementarity from sister countries, including the People's Republic of China, whose cooperation we hope to continue benefiting from. The Venezuelan Judiciary, like never before, is fully prepared to collaborate with the Judiciary of this Nation and other represented Judiciaries. We share common values and principles related to justice and legal security in our respective countries.

We are eager to firsthand witness the progress made by various justice administration systems, particularly China's judicial system. The integration of technologies and telematics, the use of artificial intelligence for verdict issuance, and the systematization and digitization for procedural expediency and judicial efficiency are areas in which the host country undeniably excels, establishing itself as a leader and a source from which we can draw inspiration.

We are confident that we will be able to work together, thanks to the exceptional experience of the Chinese judiciary, on a plan to update, modernize, and strengthen the technology of the Venezuelan judiciary. This initiative aims to propel progress in the utilization of electronic media in trials, harnessing the substantial advantages that come with it.

As we conveyed recently to the Ambassador of the People's Republic of China in Venezuela, Mr. Lan Hu, this nation serves as a benchmark in the administration of justice, international trade, judicial cooperation, legal security, and numerous other domains. It stands as a pivotal ally of the Bolivarian Republic of Venezuela. In essence, China is a fundamental guide for ethics, philosophy, spirituality, law, and international justice, for study, work, invention, trade, the digital economy, the well-being of peoples, and, ultimately, for the very existence of the planet.

We say goodbye reiterating the shared motto and purpose that should bind judicial administrations: the commitment to ensuring justice in the world.

Thank you very much.

# Innovative Development of International Commercial Dispute Resolution Mechanisms

**(Translation)**

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

### Honorable Chief Justices, Presidents of Supreme Courts, Distinguished Guests, Ladies and Gentlemen, Dear Friends,

Good morning!

It is a great pleasure to gather here in Quanzhou with my colleagues during this most pleasant season to discuss the innovative development of international commercial dispute resolution mechanisms. This year marks the tenth anniversary of the Belt and Road Initiative and the fifth year of the construction of China’s international commercial dispute resolution mechanisms by the Supreme People’s Court. Over the past five years, the Supreme People’s Court of China has made in-depth advances in the construction of China International Commercial Court (CICC), the International Commercial Expert Committee, and the “one-stop” diversified international commercial dispute resolution mechanism, playing a crucial role in improving the business environment, promoting trade and investment liberalization and facilitation, and ensuring the smooth implementation of the Belt and Road Initiative. In the following speech, I would like to share with you on this topic in light of China’s practices in the innovative development of international commercial dispute resolution mechanisms.

### Innovating procedural systems to further promote the international development of

**CICC**

In line with the principles of justice, efficiency, convenience, and low cost, the CICC has undertaken a series of innovations in its procedural systems. **In terms of jurisdiction**, it emphasizes respecting the autonomy of the parties and accepts the first instance international commercial cases where the parties agree to choose the jurisdiction of the Supreme People’s Court with a disputed subject amount exceeding RMB 300 million. In the process of amending the Civil Procedure Law, provisions have been added regarding jurisdiction clauses involving foreign-related agreements, removing the limitation of the principle of “actual connection” in agreements where the jurisdiction of Chinese courts has been chosen. Rules have been clearly stipulated for parallel litigation and the forum-non-convenience doctrine to properly resolve conflicts of international civil and commercial jurisdiction. The amended Civil Procedure Law will officially come into effect on January 1, 2024. **In terms of the trial level system**, it highlights its efficiency advantages by implementing a

“first instance as final instance system” and simultaneously granting the parties the right to apply for retrial, so as to ensure the operation of a limited error correction mechanism. **In terms of the evidence system**, the principle of convenience is highlighted, and no mandatory notarization and authentication is required for evidence obtained from outside the jurisdiction. Evidence materials in English language, with the consent of the other party, may be provided without a Chinese translation. **In the making of adjudicative documents**, the principles of openness and transparency in judicial proceedings are highlighted, allowing minority opinions of the collegiate bench to be included. Over the past five years, the CICC has effectively and fairly concluded a number of cases with guiding significance, among which one case has been selected as a guiding case by the Supreme People’s Court, and two cases have been selected as typical cases involving the Belt and Road Initiative construction.

### Innovating operation mechanisms to meet the diversified dispute resolution needs of

**international commercial entities**

Diversification and integration are not only the latest trends in the development of international commercial dispute resolution mechanisms in China, but also across the globe. The Supreme People’s Court of China attaches great importance to the organic connection and effective coordination of diversified dispute resolution mechanisms. Over the past five years, the Supreme People’s Court has appointed 61 international commercial expert committee members from 24 countries in three batches, and selected 10 international commercial arbitration institutions and two international commercial mediation institutions in two batches. Together with the CICC, they have established a “one-stop” diversified international commercial dispute resolution mechanism that organically connects litigation with mediation and arbitration, fully guaranteeing the rights of Chinese and foreign parties to choose dispute resolution entities and methods. **In terms of the connection between litigation and mediation**, with the consent of the parties, the CICC may entrust mediation agencies within the “one-stop” mechanism to mediate disputes and may issue mediation letters or judgments regarding the mediation agreement reached according to law or as requested by the parties to endow it with mandatory enforceability. **In terms of the connection between litigation and arbitration**, the parties may apply to the CICC for property security in arbitration, revocation or enforcement of arbitration awards for international commercial disputes where the parties have agreed to choose arbitration institutions within the “one-stop” mechanism and meet the requirements. **In terms of informatization construction**, relying on the achievements of smart court construction, a “one-stop” platform for international commercial dispute resolution has been established to enable the parties to handle procedures such as case filing, mediation, and court sessions online. **In addition**, the Supreme People’s Court of China has actively promoted the resolution of difficulties in ascertaining foreign laws by establishing a foreign law ascertainment platform, formulating judicial interpretations on foreign law ascertainment, and building a database

of foreign laws and cases. Currently, Guidelines for the Operation of the “One-stop” Platform for Diversified International Commercial Dispute Resolution are being developed to vigorously promote the efficient operation of this mechanism.

### Innovating cooperation models to promote the integrated development of international commercial dispute resolution mechanisms involving the Belt and Road Initiative

The Supreme People’s Court of China upholds the principles of openness, inclusiveness, mutual learning, and win-win results as its concepts of cooperation. So far, it has established friendly exchanges with judicial institutions in over 140 countries and regions and over 20 international or regional organizations, signed more than 70 cooperation agreements or memorandums, and achieved pragmatic cooperation outcomes in various fields such as judicial assistance, mediation in litigation, case exchanges, and training of legal personnel. A number of large-scale international forums on judicial cooperation and professional conferences on judicial exchanges have been held and actively build consensus on the rule of law to co-build the “Belt and Road”. It has sent representatives to participate in the consultation of several international conventions, model laws, and transaction rules, including the judgment project of the Hague Conference on Private International Law, contributing China’s wisdom to the formulation of international rules. Through judicial cases, it has been exploring the construction of new rules for railway transport documents. The Chinese government has submitted a proposal to the United Nations Commission on International Trade Law (UNCITRAL) titled “Suggestions on Conducting the Work to Addressing Issues Related to the Non- Real Right Nature of Railway Transport Documents”. Currently, UNCITRAL is reviewing the draft of an international instrument on negotiable multimodal transport documents under this topic. On September 5 this year, the signing ceremony of Beijing Convention on the Judicial Sale of Ships, the first United Nations convention named after a Chinese city, was held in Beijing, along with an international seminar. The event has effectively promoted the unification of international maritime law. In terms of cross-border recognition and enforcement of judgments, Chinese courts have actively implemented judicial assistance agreements, advocated the principle of presumption of “reciprocity”, and vigorously promoted international cooperation in the enforcement of judgments.

Dear Colleagues,

At the third Belt and Road Forum for International Cooperation last week(October18), General Sectary Xi Jinping once again reiterated to the world the Silk Road spirit of “peace and cooperation, openness and inclusiveness, mutual learning and mutual understanding, and mutual benefit and win- win”. The innovative development of international commercial dispute resolution mechanisms and the provision of more fair, efficient, convenient, and low-cost dispute resolution services for Chinese and foreign parties have become a common goal and aspiration of judicial authorities in countries to co-build the Belt and Road. The Supreme People’s Court of China stands ready to enhance

cooperation with judicial institutions from various countries, jointly study the risks and challenges faced by international commercial dispute resolution mechanisms, and learn from each other’s useful and user-friendly institutional experiences in this field. We aim to provide more powerful judicial services and guarantees for the high-quality development of the Belt and Road Initiative!

Thank you for listening!

# Innovative Development of International Commercial Dispute Resolution Mechanisms

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

### Honorable Zhang Jun President, Supreme People Court of China,

**Hon Justice Jin Yinqiang, President of Fujian High People’s Court of the People’s Republic of China, Chair of the Session,**

### Honorable Leaders of Fujian province,

**Honorable Speakers, Justices, Judges, Colleagues from around the world**

### Participants of The Maritime Silk Road International Forum on Judicial Cooperation

Good Morning, Warm Greeetings,

May peace be with us all, Chief Justice Zhang Jun,

Congratulations to the Supreme People Court of China for successful implementation of this very beautiful and professionally arranged seminar, we are honoured to be here and provided with opportunity to speak before this distinguished forum.

### Chief Justices,

**Ladies And Gentlemen**

As we are all know, after the second world war, The world economic policy was characterized by increasingly strong currents of global economic integration which were then followed by various regional economic integration initiatives, which were also supported by the rapid pace of technological development and information. All of this not only brings the consequences for the need for harmonization and unification of various legal and regulatory frameworks in the field of trade, but also requires dispute resolution mechanism that is able to provide a commitment to resolution of dispute in an efficient, predictable manner as well as being expeditious, simple and cost efficient.

During that time, we have witnessed how commercial dispute resolution continues to experience development and refinement to adapt to the needs and challenges of the times. As we understand, in the commercial world, the principles of party’s autonomy, freedom of contract and pacta sunt servanda are the most important foundations of all commercial activities, so it is not surprising that in commercial disputes resolutions, especially those with cross-border elements, alternative dispute resolution has been taking the lead and developed as a dispute resolution

mechanism that preferred by many businesses.

Since its signing, the 1958 New York Convention, has become an important convention in that serves as basis to resolve commercial disputes. With no less than 171 contracting parties in 2023, practically almost all countries in the world are parties to this alternative dispute resolution.

Recently, it seems that many parties have seen that the arbitration mechanism also has problems, which include, among other things, the issue of costs, therefore they feel that the options for resolving commercial disputes can still be improved, so that in 2018 the UN Convention on International Mediation was signed. This convention was better known as the Singapore Convention on Mediation, was adopted by the UN on 20 December 2018 and until October 2023, this Convention has been signed by a total of 56 contracting parties.

### Chief Justices,

**Ladies And Gentlemen**

Apart from development on the side of alternative commercial dispute resolution, the side of conventional dispute resolution in various countries has also undergone many changes and upgrades over the past few decades. In order to establish a dispute resolution system that is effective, efficient, competitive and compatible with international norms, many jurisdictions have taken bold steps by reaching out from their conventional competence in domestic commercial matters and opening their courtrooms wide to examine cross-border commercial disputes.

While still basing itself on party’s autonomy and freedom of contract, in the last eighteen years many countries in the world have also provided cross-border commercial dispute resolution in the form of the establishment of Commercial Courts, with international jurisdiction. Included in this list are Dubai with the Dubai International Financial Center 2004, Qatar with Qatar International Court and Dispute Resolution Center 2009, Singapore with the Singapore International Commercial Court 2015 Abu Dhabi with the Abu Dhabi Commercial Court, 2008, Kazakhstan with The Astana International Financial Center (AIFC) Court, 2018 and also includes the China, with China International Commercial Court, 2018. Apart from that, there are quite a lot of jurisdictions which, although they do not form their own international commercial courts, have formed special chambers that provide this service, such as Germany, France, The International Chamber of the Paris Commercial Court, formed in 1995, the Netherlands with the Netherlands Commercial Court in 2019, Belgium and Switzerland and so much more. These courts offer so many advantages such as high level of expertise, more flexible, modern and efficient procedural law. Some jurisdictions have even specifically adapted arbitration procedural rules, and others aim to create a more integral dispute resolution system in which litigation and arbitration go hand in hand.

### Chief Justices,

**Ladies And Gentlemen**

This phenomenon shows that, commercial dispute resolution mechanisms, apart from aiming to provide justice, also have characteristics similar to trade itself, namely that they continue to evolve,

in order to find more effective and efficient solutions as their contribution to the smooth running of trade and business. So it is not surprising that over time, more and more jurisdictions will also take similar steps, especially since various Global Performance Indicators, such as the World Bank Group new Business Ready Index, which will specifically measure how well a country’s legal system can interact with other countries.

This means that the issue of recognition of court decisions issued by foreign jurisdictions will become more and more important, and also as important as the party’s freedom to choose forum to resolve their dispute, so that in the future it will be fully understood if international private law conventions, such as the Choice of Court convention or the Recognition convention of Foreign Judgment will be relevant, because talking about the internationalization of commercial dispute resolution then, of course a country must be ready to anticipate interactions with foreign judgments as well.

### Chief Justices,

**Ladies And Gentlemen**

I would Finally, just want to emphasize, that with the intensity of globalization and regionalization of the economy, countries need to continue to develop their commercial dispute resolution, not only to protect national interests, but also to provide public trust and confidence in carrying out commercial transactions, which in turn will encourage innovation and investment on all sides.

What I have explained above is just my observation of the phenomena that occur, but indeed innovative developments in resolving commercial disputes can occur in various forms, from the practical side, for example improving procedures or other things, for example the implementation of information technology, but for now I think, I am trying to convey this as an addition to the discourse in this respected forum.

Thank you Chief Justices, for your attention, and I wish you all a productive, successful forum as well as health and safety.

May Peace Be Upon You.

# Innovative Development of International Commercial Dispute Resolution Mechanisms

**Khalid Ali A Al-Obaidly, Member of the Supreme Judiciary Council, President of the Court of Investment and Trade of the State of Qatar**



**In the name of the God, the Most Gracious, the Most Merciful.**

**Honorable Chief Justice Zhang Jun, President of the Supreme People's Court of the People's Republic of China.**

**Honorable Judges and Participants, Ladies and Gentlemen,**

**Peace be upon you, and may the mercy of the God and His blessings be upon you...**

I am pleased, on behalf of myself and my fellow delegation members, to greet you and express our immense pleasure in participating in this event, which comes as a gracious invitation from His Excellency Justice Zhang Jun, the Chief Justice of the Supreme People's Court of the friendly People's Republic of China. In the context of discussing the topic of interest in our session this morning, which revolves around the role of technology and innovation in supporting the process of dispute resolution, both general and commercial, it leads me to present our perspective in the State of Qatar.

This perspective stems from a context related to the growth trajectory of a country that gained independence in 1971, culminating the efforts of its leaders that began almost 100 years before independence. This aims to achieve the fundamental goal in the lives of the leadership and people of my country, Qatar.

It is not hidden from all of us that the path of building the State of Qatar, like that of other countries in the world, has passed through major global transformations witnessed at the end of the twentieth century and the beginning of the twenty-first century. Like many of these circumstances, there were significant challenges to national development patterns, especially with the rapid leaps in the use of science and technological innovation in serving human life. Whether in the public services or personal aspects of life.

In these circumstances, the practice of justice around the world has been hesitant to embrace the roles of technology and intelligent procedural innovation, which is understandable. It is influenced by both internal factors related to the traditional thought sovereignty of judges at that time and objective conditions related to tools, knowledge, and financial resources on one hand. On the other hand, litigation is regulated by legislations, many of which did not recognize technological roles in this field.

However, this did not last long, as judges came under the pressure of reality and public opinion demands in their societies to inevitably embrace technological roles in supporting the process of judicial dispute resolution, especially in commercial disputes. These disputes are no longer confined to the local and regional frameworks but have become transboundary and a major player in global development and international economic cooperation methodologies. The need for litigation has become essential, not just a luxury.

Based on this diagnostic vision, my country, Qatar, has taken a leading position in these efforts, as announced by His Highness Sheikh Tamim bin Hamad Al Thani, the Amir of the State of Qatar, in his speech at the 76th session of the United Nations General Assembly. Qatar prioritizes the knowledge economy, based on the foundations of technological innovation, smart solutions, and digitization.

In light of this, the Qatari judicial system, led by its Supreme Judicial Council, has quickly taken steps to enhance the country's ability to support the efforts to create and develop the knowledge economy. Here, I would like to highlight what we call the Qatari Technical Judicial Innovation Quintet as follows:

1. The Investment and Trade Court was established under Law No. 21 of 2021, ensuring that courts in Qatar have a specialized court with a structural and intelligent resource base, where technology is a cornerstone. The digitization of procedural workflow was adopted as the only option, making all pleadings and legal documents electronic, efficient, and secure. The paper usage rate reached zero less than a year after the court's establishment.

2. For the first time in the Qatar’s litigation system, the Investment and Trade Court introduced a case management system based on technological support to expedite proceedings and retrieve its archives and documents supporting the claims of the parties.

3. The Law No. 24 of 2017 was introduced, creating a qualitative infrastructure for the work of the courts. It provided a procedural judicial recognition of using modern electronic communication means as a legally supportive method for notifying litigants judicially. This came after the practice of judicial announcements and notifying litigants about the aspects and dates of the lawsuit used to occur in a traditional and routine manner, resulting in significant delays and a very lengthy litigation process. Not to mention the escape of parties from the litigation requirements, intentionally or otherwise.

4. The Supreme Judicial Council established a network of partnerships with all parties involved worldwide in supporting the general and commercial litigation process. This includes the Central Bank, the stock market, law enforcement agencies, and government entities specialized in trade and business from other countries. This aims to facilitate documenting and delivering the statements of these partners to support the acceleration and resolution of litigation, in addition to supporting the standards and requirements of claims related to foreign investors.

5. Building self-capacity for judges to deal with technology has become a fundamental requirement for work, promotion, and evaluation. Capacity-building programs for judges and their assistants were introduced to understand the roles of artificial intelligence in supporting the procedural process for judges and its roles in supporting commercial criminal activity. The goal is to have judges enhanced with technological knowledge and skills that support their judicial specialization.

The tangible results of the four main steps above are as follows:

1. Accelerating the time frame of litigation resolution, with 71% cases closed at the primary level within one year.

2. 97% of cases filed electronically.

In conclusion, I would like to express high appreciation for the Chinese commercial litigation experience, particularly for its global leadership in integrating technology and smart solutions into the judicial service. In this regard, I am pleased to convey the greetings of His Excellency Dr. Hassan bin Lahdan Alhassan Al-Muhannadi, the President of the Supreme Judicial Council and the President of the Court of Cassation for the State of Qatar. He expresses the desire, on behalf of our Qatari judicial colleagues, to strengthen relations and cooperation with the Supreme People's Court of the People's Republic of China, especially in areas of exchanging experiences and transferring lessons learned, particularly in the fields of employing technological innovation to support the evolving human conditions driven by various innovative patterns.

Peace be upon you.

# Innovative Development of International Commercial Dispute Resolution Mechanisms

## Vui Clarence Joseph Nelson, Senior Justice of the Supreme

**Court of the Independent State of Samoa**

### Honourable Chief Justice Zhang and esteemed judges and justices of the PRC, distinguished guests, Ladies and gentlemen,

Hěn róngxìng/ shòu yāo/ cān jiā/ běn cì/ huó dòng, dà jiā hǎo.

### Samoa Context:

* Population: approx 200,000
* Land area: 2,840 square km
* Economy 2022: approx USD$850 million.

Introduction - In today’s complex global commercial environment, it is well-recognized globally that in order to attract foreign investment, boost trade and economic growth - certain things are required - government stability, legal certainty and effective commercial dispute settlement mechanisms are 3 such essential aspects -because commercial disputes are as inevitable as day and night in the world of trade and economics. This Paper examines a number of innovative and exciting new ways and approaches developed for the purpose of resolving international trade disputes.

### International Commercial Disputes in Samoa - principally relates to:

* Trade related contractual disputes (export / importation of goods–involving suppliers,

importers, consumers of goods and quality managing agencies for such goods)

* Foreign investment disputes between foreign investors and their local partners
* Samoa registered Offshore banks and international companies legally resident in Samoa – generally complex, multi-party disputes involving significant financial interests

### Approaches to International Commercial Dispute Resolution:

* There are 4 common dispute resolution methods in international trade: negotiation,

mediation, commercial arbitration and litigation.

* In Samoa’s case, international dispute resolution is principally focused on negotiation and

litigation. Have had a few Arbitration cases but these have ended in disaster (problems include

* poor processes and inadequate expertise of lawyers and the appointed Arbitrator of arbitration processes and technical aspects of the particular matter e.g. a construction or engineering dispute arising out of construction of a high-rise building requires significant specialised knowledge)
	+ More effectively-the Samoan courts employ Alternative Dispute Resolution (‘ADR’) mechanisms prior to trial. This involves Court directed mediation conducted by Court appointed mediators and Judicial Settlement Conferences presided over by Judges. Court directed ADR has

been very successful: [refer statistics - generally 2/3rds settled by mediation, dropped to around

50% during Covid - due to unavailability of parties, judges & mediators other Covid-related reasons

* figures now returning to pre-Covid levels]
	+ There is also Samoa’s Reciprocal Enforcement of Judgments Act 1970-which establishes a statutory mechanism for recognition and enforcement of foreign judgments. However, the legislation recognizes only two (2) jurisdictions: New Zealand and certain States of Australia. Foreign judgments outside these 2 jurisdictions can only be recognized through the common law. Time does not permit a discussion delving into these common law requirements. Suffice to say they are cumbersome, time-consuming and consequently expensive. So this is not a good option if your judgment is not from New Zealand or these particular states of Australia.
	+ Foreign arbitral awards are also enforceable in Samoa-however our legislation viz the

Arbitration Act 1976 is outdated and is not modeled for instance on the UNCITRAL model law.

### Lastly make reference to the Singapore Convention, New York Convention & Specialist

**Courts**

* + International mediation is of course a key mechanism for international dispute resolution. The Singapore Convention on Mediation provides an efficient framework for the settlement of international commercial disputes through mediation by enabling parties to register and enforce mediated settlement agreement. Although Samoa and 55 other countries have signed the Convention, many have not ratified the Convention. Nevertheless, it remains an innovative framework for the settlement and enforcement of international commercial disputes.
	+ For arbitration, the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention” is the key instrument in the field of international arbitration. With 169 contracting parties, the Convention requires courts of contracting states to give effect to private agreements to arbitrate and to recognize and enforce arbitration awards made in other contracting states. Although the Convention has existed for over 60 years, it remains today an important and effective tool for the effective settlement of international commercial disputes.
	+ China of course has very developed Arbitration processes-you have the Beijing International

Centre - also have the CIETAC China International Economic and Trade Arbitration Commission.

* + In more recent years, there has also emerged specialized international commercial domestic courts in the Middle East, Asia and Europe. These courts have been described as ‘“arbitration in litigation”. A good example is the Singapore International Commercial Court (“SICC”) and the China International Commercial Court (“CICC”) which combines the best practices of international arbitration with the substantive principles of international commercial law. The procedures in those courts are flexible and may be tailored to suit parties’ preferences. They demonstrate the important role courts can play in international commercial dispute settlements and in support of national economic development priorities.
	+ The China International Commercial Court (CICC) was of course established by the Supreme People's Court of China (SPC) to adjudicate international commercial cases. CICC's objective is to try international commercial cases fairly and timely in accordance with the law, protect the lawful rights and interests of Chinese and foreign parties equally, and create a stable, fair, transparent, and convenient rule of law international business environment.
	+ The First International Commercial Court is situated in Shenzhen, Guangdong Province, and the Second International Commercial Court in Xi'an, Shaanxi Province. The Fourth Civil Division of SPC is responsible for coordinating and guiding the two international commercial courts.
	+ Judges are experienced commercial judges and the jurisdiction allows foreign lawyers to represent parties in certain circumstances, so long as they are registered with the Court and are subject to the Code of Ethics of the jurisdiction.
	+ Finally in this area of Int’l Mechanisms, want to refer to an exciting new development from a regional and Pacific perspective for resolving Int’l Environtal Law disputes.

Just come from Suva, Fiji where we have been having discussions with Pacific judges about the possibility of establishing an Int’l Dispute Resolution Mechanism to deal with Environmental disputes in the Pacific. This is a model that could either be mediation based where the parties would seek mediated outcomes, or arbitration based relying on arbitrated outcomes or litigation based as in a Regional Body or Court that would hear and deliver Opinions on international environmental complaints. As stated, a new and exciting initiative under consideration for resolving international environmental disputes which inevitably has commercial consequences of one form or another.

### Wrap Up Remarks

Thank you Chief Justice Zhang of the Supreme People’s Court and Honourable Colleagues for the Invitation to participate in this very valuable Conference. Not often we get such valuable opportunities, as we say in our language Faafetai tele lava or as they say in yours - xie xie, da jia.

# Innovative Development of International Commercial Dispute Resolution Mechanisms

## Grittin Srirath, Judge in the Research Justice Division of the Supreme Court, Secretary of the Intellectual Property and International Trade Division of the Kingdom of Thailand

In recent years, we, the Court of Justice, the Kingdom of Thailand, has magnificent development to talk about. Sawadee Krub (สวัสดีครับ), Greeting, chief justices, justices, judges, ladies, and gentlemen.

International Commercial Dispute Resolution Mechanisms can be considered in two dimensions: Trial and Alternative Dispute Resolution (ADR).

For Trial, cases could go to the Courts of Justice, supported by the Office of the Judiciary, which in civil cases are disputes between private sectors, or could go to the Administrative Courts, supported by the Office of Administrative Court, which deal with cases between private sectors and state entities.

Back to the Courts of Justice, generally, cases could start from courts of first instance, then could appeal to the Court of Appeal or the Court of Appeal, Regions I to IX, and could finally appeal to the Supreme Court. The Supreme Court of Thailand is the final court of appeal in all civil and criminal cases in the entire Kingdom and is the highest Court of Justice in the country.

To deal with international commercial disputes, we have specialized courts and judges. In 1996, we introduced the Central Intellectual Property and International Trade Court and Intellectual Property and International Trade Division of the Supreme Court. In 2011, we introduced the Court of Appeal for Specialized Cases which has Intellectual Property and International Trade Division in that court.

For the meaning of Intellectual Property and International Trade (IPIT) cases, Act for the Establishment of and Procedure for Intellectual Property and International Trade Court, B.E. 2539 (1996) Section 7 provides definitions for 11 subsections, which are:

1. criminal cases regarding trademarks, copyrights and patents
2. criminal cases regarding offences under Sections 271– 275 of the Criminal Code (offences relating to commerce)
3. civil cases regarding trademarks, copyrights, patents and cases arising from agreements on technology transfers or licensing agreements
4. civil cases in connection with offences under Sections 271 –275 of the Criminal Code (offences relating to commerce)
5. civil cases regarding international sale, exchange of goods or financial instruments, international services, international carriage, insurance and other related juristic acts
6. civil cases regarding letters of credit issued in connection with transactions under (5), inward or outward remittance of funds, trust receipts, and guarantees in connection therewith
7. civil cases regarding arrest of ships
8. civil cases regarding dumping and subsidization of goods or services from abroad
9. civil or criminal cases regarding disputes over layout – designs of integrated – circuits, scientific discoveries, trade names, geographical indications, trade secrets and plant varieties protection
10. civil or criminal cases that are prescribed to be under the jurisdiction of the intellectual property and international trade courts
11. civil cases regarding arbitration to settle disputes under (3) – (10)

As a result, for international commercial cases in the Court of Justice, cases could start from the Central IPIT court, then could appeal to the Court of Appeal for Specialized Cases in IPIT division, and could finally appeal to the Supreme Court in IPIT division.

For Alternative Dispute Resolution (ADR), there are two major mechanisms, I would like to talk about: the mediation, which could provide compromise agreement, and the Arbitration, which could provide arbitral award.

In Mediation, there are out-of-Court mediation and Court-annex mediation. For out-of-Court mediation is pre-litigation dispute. People could go to the Mediation Center, the Alternative Dispute Resolution Office, the Office of the Judiciary, or could go to other mediation centers. For court-annex mediation, cases are still pending in court. The parties could go to mediation center of the courts of justice nationwide.

In Arbitration, there also are Court-annexed Arbitration and Out-of-Court Arbitration. For Out-of-Court Arbitration, in 1958, the New York Convention has been introduced, and Thailand has been a member state of the New York Convention since 1959. We had the Arbitration Act in 1987, then we enacted the new Arbitration Act in 2002 using 1985 UNCITRAL Model Law on International Commercial Arbitration as a model law. In 2019, the Arbitration Act was amended by adding Chapter 2/1 Foreign Arbitrator, to make convenient about work permit for foreign arbitrator. The Office of the Judiciary also supervises the Thai Arbitration Institute (TAI), which enjoyed a long history since it was still with the Ministry of Justice. Under the Constitution of the Kingdom of Thailand B.E. 2540 (1997), however, administrative office of the court (Courts of Justice) has been separated from the Ministry of Justice. So now, TAI has been under supervision of the Office of the Judiciary. In 2018, the Office of the Judiciary introduced Case Information Online Service (CIOS) for cases in courts of justice, and in the following year, 2019, TAI also introduced E-Arbitration (TAI EASY), which is a web-based platform system. Thailand also has other arbitration institutions, such as the Thailand Arbitration Center (THAC), which is under supervision of the Ministry of Justice. Thanks to the New York Convention and our Arbitration Act, consequently, foreign arbitration awards could be enforced in Thailand.

And these are our innovative development of international commercial dispute resolution mechanisms. We, the Court of Justice, the Kingdom of Thailand, are ready to be a part of the Maritime Silk Road. Finally, I would like to thank this Forum for giving me the opportunity to talk about our development.

Thank you 谢谢 (Xièxiè).

# Innovative Promotion of Online Dispute Resolution Actively Serving and Guaranteeing the Construction of the

**Digital Silk Road**

# (Translation)

## Jin Yinqiang, Justice, President of Fujian High People’s Court of the People’s Republic of China

### Honorable Chief Justices, Presidents of Supreme Courts, Justices and Judges,

**Distinguished Guests, Ladies and Gentlemen, Dear Friends:**

Good afternoon!

Today the world has entered a digital era. The booming digital economy has facilitated the rapid growth of e-commerce trade along the Silk Road, contributing to the extension and consolidation of the Belt and Road, however at the same time raising new and higher requirements for the improvement and development of online dispute resolution among countries. Chinese courts have firmly implemented Xi Jinping’s thought on the rule of law and President Xi Jinping’s important thought on building China into a leading country in cyberspace, and China courts have kept pace with the times, actively and innovatively promoted online dispute resolution, endeavoring to provide judicial services for the construction of the Digital Silk Road.

### Innovative Practices of Chinese Courts in Promoting Online Dispute Resolution

Chinese courts have taken the initiative to respond to the demands of modern times, vigorously promoting online dispute resolution and innovation in litigation models and mechanisms. Based on the “online trial of online proceedings” practice, which was first explored by the Internet Courts in Hangzhou, Beijing and Guangzhou, the Chinese Judiciary has gradually promoted the online proceedings mode in courts across the country. The entire case procedure from case filing to case acceptance, case hearing, service of documents and enforcement of judgment can be conducted online.

**First, China refined the system of rules regarding online dispute resolution.** The Supreme People’s Court has formulated the Online Litigation Rules of the People’s Courts, Online Mediation Rules of the People’s Courts, and Online Operation Rules of the People’s Courts, with each of the three focusing on different fields, complementing and organically connecting with each other, forming a “trinity” system of rules on online dispute resolution, so that all kinds of online judicial activities have rules to follow. These also promoted online dispute resolution with Chinese characteristics to take a leap from practical exploration to institutional construction.

### Second, China improved the online dispute resolution platform system. With the help of

digital technology, we have built a smart platform covering the four levels of courts, with internally and externally connected online services, mediation, lawyer services, cross-border online filing, document service, asset preservation, and appraisal commissioning. We have created an online dispute resolution platform system that integrates litigation, arbitration and mediation, ensuring that the resolution process is good and fast, minimizing parties’ litigation-related burden and speeding up the realization of justice.

**Third, China optimized the online dispute resolution mechanisms.** The Supreme People’s Court has, in collaboration with 13 organizations, including the All-China Federation of Returned Overseas Chinese, the All-China Federation of Industry and Commerce, China Association of Small and Medium Enterprises, set up a “head office-to-head office” online litigation & mediation docking mechanism. And local district courts have accelerated the implementation of the “point-to- point” online litigation & mediation docking mechanism accordingly. China , vigorously promotes electronic service, intelligent judicial appraisal and intelligent judgment enforcement, etc., so as to provide parties with a more balanced, fair, inclusive and convenient judicial service.

### The Local Pattern of Fujian Courts Promoting Online Dispute Resolution

Fujian is the very key place where Xi Jinping’s thought on the rule of law was pondered and practiced; “Digital Fujian” is the inspiration and starting point of the practice for the construction of “Digital China”. As the core area of the 21st Century Maritime Silk Road, Fujian has traded about

4.4 trillion yuan with countries along the Belt and Road over the past decade. In particular, trading volume between Fujian and BRI partner countries amounted to 735.1 billion yuan in 2022, up by 142% year on year. Fujian courts have utilized its significant and unique geographical advantages, made good use of development achievements of the “Digital Fujian Judiciary”, continued to enhance onhine dispute resolution capabilities to assist in the construction of the Digital Silk Road. In the past three years, Fujian courts have concluded some 3,400 foreign-related civil and commercial cases and offered judicial assistance for some 2,500 foreign-related civil and commercial cases

**First, Fujian courts highlighted the scientific layout, and deepened the “one network for all business” mode.** In recent years, Fujian has set up the Xiamen and Quanzhou International Commercial Court, Xiamen Foreign-related Maritime Court and Fujian High People’s Court Maritime Silk Road Central Legal District circuit bench; free trade tribunals or specialized collegiate bench were established in three free trade zones, realizing full coverage of the “one-stop” online international commercial dispute resolution in the district courts of the majority of the cities and municipalities.

**Second, Fujian court system focused on the unifying rules applied and deepened the “one standard for all” criteria.** Focusing on the unity of substantive and procedural justice, we have strictly followed the Supreme People’s Court’s judicial interpretations related to face recognition, online consumption and online intellectual property infringement, etc. Fujian High People’s Court formulated a number of measures and norms, including a case-handling guide for the hearing of Silk

Road e-commerce and other foreign-related cases, a policy of case-handling time limit management, and also a guide for the ascertainment of foreign applicable laws, among other guides. In addition, we further improved the quality and effectiveness of online resolution of disputes and other cases related to digital economy

**Third, Fujian court system pursued the efficiency of resolving disputes and deepened the “one-stop quick settlement” mode.** We performed the role of the active judiciary. A docking mechanism with 28 different departments or industries in this province was established, optimizing and upgrading the “1+7+N” mode (which means 1 court + 7 administrative departments + multiple non-governmental mediation organizations) maritime “Fengqiao Experience” based working mechanism, to help the parties to the case resolve their disputes in a multi-channel, high-efficiency and low-cost manner. The Quanzhou Court pioneered the cross-district case filing litigation service, which was promoted and introduced to all courts nationwide. Such innovative practice was awarded the first “People’s Court Reform and Innovation Award”. In addition to the above, it is also Fujian court system, for the first time in the country, developed the “One Eight Five” model of judicial intensive documents service mechanism (one center, eight delivering methods, five types of full coverage), realizing the instant and efficient legal document service.

### The Outlook for Online Dispute Resolution under the Principle of Extensive Consultation, Joint Contribution and Shared Benefits

Faced with the development of new technologies such as the Internet, big data, artificial intelligence, etc., we should follow the trend of the times, promote the construction of digitalized justice, as well as the high-level development of the new digital economy, such as the Silk Road e-commerce, so as to make greater judicial contributions to common progress and prosperity of all countries along the Belt and Road.

**First, further strengthen the integration of civilization to “add wisdom” to online dispute resolution.** Adhering to the attitude of “to open up, not to close off”, , we will strengthen judicial cooperation in the field of online dispute resolution. We will work together to build a peaceful, secure, open, cooperative and orderly online dispute resolution platform frame, so as to promote economic and trade exchanges and civilizational interactions through digital judicial services.

**Second, further strengthen the integration of technology, and “energize” online dispute resolution.** We should adhere to the systems thinking, coordinate development and security, and comprehensively deepen digital judicial innovation. We should also enhance the application of technology in judicial system and improve the mechanism of information access inclusiveness, so that all types of parties to a case can enjoy inclusive, equal and non-discriminatory digital judicial services.

**Third, further strengthen application integration, bringing online dispute resolution to “the next level”.** Adhering to the principle of extensive consultation, joint contribution and shared benefits, we will build consensus, step up communication and promote the idea communications,

platforms integration, rules’ inter-connection and the information flow for online dispute resolution, so as to promote the common and balanced development of online resolution in the countries of the Belt and Road Initiative, and thus continuously meet the all-around world people’s diversified and digitized needs of the rule of law, and bringing more benefits to all mankind.

Thank you!

# Digital Economy, E-commerce along the Silk Road, and Online Dispute Resolution

## Tesfaye Niway Engidashet, Vice President of First Instance Court of the Federal Democratic Republic of Ethiopia

### Honorable Zhang Jun, President of Supreme People’s Court of the People’s Republic of China, Chief Justices/Presidents of Partner Jurisdictions,

**Distinguished guests, Ladies and Gentlemen,**

Good afternoon everyone. It is a great honor to be here in China for the **Maritime Silk Road International Forum on Judicial Cooperation** 2023 convened by the Supreme People’s Court of the People’s Republic of China. The Ethiopia’s Federal Supreme Court and the Ethiopian Judiciary thanks the its counterpart for the invitation and look forward to work with you and other BRI partner Judiciary Organs on common issues.

I am delighted to make a speech on the title of **Digital Economy along the Silk Road and Preparedness of the Judiciary.** The subject that I tried to address on my speech has an immense importance for the business, individuals and society as a whole. I try to cover areas of digital economy, the need and the benefits and perils of this economy-if not managed well- and the readiness of the judiciary to cope with and adopt with the digital world.

Belt and Road Initiative is a grand project developed by China but owned by the world has achieved a lot within the last 10 years. Over 3,000 BRI cooperation projects have been launched in the past decade, involving close to 1 trillion U.S. dollars of investment. Many of these projects, such as railways, bridges, and pipelines, have helped build an infrastructure network that connects sub regions in Asia as well as the continents of Asia, Europe, and Africa.

Before going to the details of digital economy I want to pinpoints some caveats of BRI which are linked with the digital economy. For this allow me to quote white paper1issued by the Chinese government which states that “BRI is **a path to innovation**. Innovation serves as a critical driving force for progress. The BRI is dedicated to innovation-led development, harnessing the opportunities presented by digital, internet-based and smart development. It explores new business forms, technologies and models, seeking out fresh sources of growth and innovative development pathways to propel transformative advancements for all involved. Participants collaborate to connect digital infrastructure, build the Digital Silk Road, strengthen innovative cooperation in cutting-edge fields, and promote the deep integration of science, technology, industry and finance. These efforts aim to

1. The Belt and Road Initiative: A Key Pillar of the Global Community of Shared Future The State Council Information Office of the People’s Republic

of China October 2023

optimize the environment for innovation, gather innovative resources, foster a regional ecosystem of collaborative innovation, and bridge the digital divide, injecting strong momentum into common development.”

### Ladies and Gentlemen

From the aforementioned white paper the ideas to be gleaned is that digital and digitalization are here to stay with us, so that it is incumbent upon us to harness the benefits accrue from this new trends. And to do that collaboration of the partner jurisdiction to build the digital Silk Road (DSR) is the only way forward.

Digital Silk Road is a significant part of BRI it is focuses on building telecommunications networks, enhancing the capabilities in artificial intelligence, cloud computing, e-commerce and mobile payment systems, surveillance technology, smart cities, and other high-tech areas.One of the elements of digital Silk Road is building vibrant digital economy. Yesterday we have visited Intermediary court in Quanzhou and the Museum. It is commendable that the judiciary should use modern technology to make their service more efficient and people centered. Especially the visit in the museum shows the vitality of Guangzhou city, the intersection of land and sea, the diversity and harmony of different cultures, religions and so on. Simply it is stunning.

The digital economy in nutshell represents the ideas that individuals, businesses, devices, data and operations through are connected through digital technology to create economic values. It includes an online connections and transactions that take place across multiple sectors and technologies, such as the internet, mobile technology, big data and information and communications technology.

The digital economy basically is different from a traditional economy due to it is mainly based on the digital technology and achieved through online transactions. It is based on Digital innovations such as the internet of things (IoT), artificial intelligence (AI), Nano Technology, Big Data, virtual reality, block chain and autonomous vehicles all play a part in creating a digital economy. The digital economy is here to stay. Digitalization of trade has seen global ecommerce revenue reach US$3,784 trillion in 2022. As the global economy rapidly digitalizes, an estimated 70% of new value created over the coming decade will be based on digitally-enabled platform business models.

Digital economy has been evolved by using various tools and systems which includes digital trade and e commerce, social media, increased remote work adoption (e.g. zoom, Microsoft teams, slack etc.), Omni Channel approach to sales, AI and Automation (virtual assistants, Chabot,), digital payments and Crypto currencies (PayPal, Venom, mobile wallets), Digital entertainments (Netflix, spotify and YouTube etc.), telemedicine (used mainly at time of Covid), Sharing Economy (Uber, Airbnb…). The format of business models are even has got its peculiar character and changes how the business is conducted. This phenomena has been depicted by TechCrunch, a digital economy new site as follows ***“Uber, the World’s largest taxi company owns no vehicles, Facebook the world most popular media owner creates no content. Alibaba, the most valuable retailer, has***

***no inventory. And Airbnb, the world largest accommodation provider, owns no real estate… something interesting is happening”***

Digital Economy has gigantic importance for the economy. It streamline processes, reduce costs, and create new revenue streams. It helps organizations and individuals to harness the technology to carry out their tasks better, faster and efficient. By doing so digital transformation will be realized. Digital economy has various advantages for the economy. It boosts productivity, extended the reach, ensure to access to the data, greater convenience for the market actors, improved customer experience. However there are also some concerns in digital economy which includes privacy and security concerns, waves of disruption, job displacement, monopolization, creation of digital divide, environmental consequence (e.g. in data centers). By 2028, just 9% of all payments will be made in physical currency – but we may miss it.

Digital economy works essentially well on the created digital assets. Digitalization has not only transferred economic activity online, it has also de-materialized everyday physical objects. Movies, recorded music, books, games and art can now be digitized and sold or traded online as digital assets. This opens the possibility to new opportunities for the creative industries.

New legal questions naturally arise due to this trend. For example, are digital assets property and if so of what variety of property are they? In some jurisdiction digital assets has been considered as intangible property. In other jurisdictions the name of the crypto currency looks like an alien concept to conjure up.

Data sovereignty and localization are becoming a very ambiguous words and at time an areas of debates and discussion. Data sovereignty, like digital assets, has its own dedicated and distinctive features related with the value it creates. While goods and services have traditionally been transported physically using various modes of transport, data is naturally different. Data is delivered in data packets through fiber-optic cables and satellites. Data flows now underpin and facilitate the movement of physical objects and the delivery of services. It is apparent that data is the raw material from which new services, business models and value are created. Issues like enforcement of data Sovereignty and data localization has its own difficulties.

The enforcement of data sovereignty regulations faces several difficulties. Which includes:

* 1. in 2022, the volume of data created, captured, copied, and consumed worldwide was expected to hit 97 zettabytes, doubling to 197 zettabytes in 2025. The rate of acceleration is stunning and this unfolds a magnificent hurdle for the execution and identification of the applicable laws.
	2. Cloud computing services are at their most efficient when data is free to flow between national borders. However, as the infrastructure of cloud computing infrastructure has been constructed in a dispersed manner, the issue of data sovereignty has grappled with problem.

Another thorny issues along data sovereignty is data localization. Data localization is used by corporations and governments to make sure that the date possesses its own sovereignty. This raises difficult questions on where data is to be stored and the conditions that apply to its transfer between

jurisdictions.

### Ladies and Gentlemen

My Country Ethiopia is located in Eastern Africa, is the second populous country in Africa having more than120 million People. Ethiopia has a long diplomatic relation with China dates back to 2000 years. As a never colonized country Ethipia’s modern diplomatic relationship has been started with the formation of Modern China by Mao Zedong. The Ethiopian Emperor Hailselasi has come to China in 1971 to strengthen the diplomatic relationship between two countries. This time the relationship between Ethiopia and China has got a status is STRATEGIC level. The Ethiopian government to build and nurture digital economy has prepared a policy document called **Digital Ethiopia 2025: A Digital Strategy for Ethiopia Inclusive Prosperity.** On this strategy one of the objective is that “to propose an inclusive digital economy that will catalyze the realization of Ethiopia’s broader development Vision and to mobilized critical stakeholders to address the imperatives that will enable an inclusive digital economy”. The strategy has outlined and elaborated four the digital enabled pathways for inclusive national prosperity. The pathways are unleashing value from agriculture, the next version of global value chain is manufacturing, build the IT enabled services, Digital and the driver of tourism competitiveness. For these pathways to bear a fruit the enablers are digital ID, Digital payments and cyber security. For the realization of the vision and objectives of the strategy the government has established Institutions like Ministry of Innovation and Technology, Information Network Security Administration, and Artificial Intelligence Institute. Recently laws related with building digital economy like Digital Id Law, E-Transaction Proclamation Electronic Signature Law has also promulgated. Based on this backdrop Ethiopia’s judiciary can and should learn from other countries to play its fair share in having vibrant and inclusive digital economy.

Digital economy is an issue of today and future, it’s important to harness the digitalization for the prosperity of the society. To do this, I think continuous engagement and collaboration between BRI Judicial partners is very crucial one. Mainly the Collaboration should rest on how to utilize the benefits of digital world in collaboration without compromising the sovereignty of each countries and by giving due consideration of the specific and particular status of each countries. In addition the collaboration between different jurisdictions should be based on the Silk Road spirit. The Silk Road Sprit is essentially based on the upholding solidarity and mutual trust, equality and mutual benefit, inclusiveness and mutual learning, and win-win cooperation, countries of different ethnic groups, beliefs and cultural backgrounds could share peace and achieve development together.

Based on the Silk Road Sprit Countries can learn from each other through exchanges, capacity building, knowledge transfer etc. For example I think we can learn from China the work of Internet courts. Internets courts are found Hangzhou (2017), Beijing (2018), Guangzhou (2018), which entertains cases related with E-Commerce, Infringements of digital rights and so on. In addition we can learn from each other how to adjudicate case of cybercrimes, digital security and so on.

I hope that the points that I tried to raise are grist for the mill for the forum. In parlance Belt and Road Initiative Partners particularity the judicial community must confront the legal challenges and find suitable solutions. It is a brave new world that demands brave new solutions.

Finally I want to thank, AGAIN, the Chinese Supreme Peoples’ Court, for the nice hospitality and reception I got in Guanzhou, Xiamen and here in Quanzhou. Really it is coming to second Home-CHINA. My very best wishes for a fruitful discussion this afternoon.

XIE XIE

# E-Commerce in Greece and Europe and

**Resolving Disputes That Arise**

## Theodora Markopoulou, Rapporteur Judge at the Council of State of the Hellenic Republic

1. **Introduction.** E-commerce is not the future but the present. Profits from online sales from 2019 onwards are valued at trillions of dollars worldwide (growth rate + 13.6%), while especially for Greece 2020 is the year that overturned all forecasts for growth in e-commerce, despite our slow speeds as a country in digital transformation. Especially, in small businesses there have been changes & growth rates in the e-commerce market that in other circumstances may have taken us 5-10 years to happen and this is mainly justified due to the reversal that the Covid-19 pandemic brought to our consumer habits, online shopping became a means of survival and often mental uplift. Consumers depend on their purchases on the Internet to such an extent that at some point even giant online stores (see Amazon) have struggled to manage their order volume.
	1. **Definition of electronic commerce and its establishment as a new legal field.** The important contribution of the internet. E-commerce refers to the electronic conduct of transactions, the provision of products and services for remuneration through the use of electronic processing equipment for distance communication and data transfer. It reflects the modern needs for speed, while the evolution of classical-timeless commerce into electronic commerce is due to the rapid use of the internet, since the basis of commerce as a legal concept does not change. Some of the global sites that helped inspire online stores are amazon.com, e-bay.com, Facebook, Yahoo!. com, through which anyone can buy products, services and intangibles (music software programs). In a few years, businesses and citizens are expected to conduct most of their transactions electronically, providing electronic identities and electronic wallets.
	2. **Statistics:** Online shopping in Greece increased by 10 percentage points in just one year: from 58% in 2021, the percentage of Greeks who have made at least one purchase in the last three months reached 68% in 2022. Online shopping continues to grow across the European Union, with 75% of people aged 16 to 74 in the EU buying goods or services for private use online in 2022. The share of online shopping increased from 55% in 2012 to 75% in 2022, an increase of 20 percentage points. According to Eurostat data, published in 2023, the most fanatical e-shoppers in Europe are the Dutch, where in 2022 92% of internet users made online purchases. It is followed by Denmark with 90% and Ireland with 89%. On the other hand, markets such as Bulgaria are still far from e-shopping, where less than 50% of Internet users shop online (49%). Between 2012 and 2022, according to the same data, the countries that saw online shopping skyrocket were Estonia (+47 percentage points), Hungary (+43 percentage points), the Czech Republic and Romania (+41

percentage points).

### Advantages and disadvantages of e-commerce for consumersand businesses as

**parties.**

### Advantages for businesses:

·Customer growth

·Business operation 24 hours/day for 365 days/year

·Saving advertising costs, rent, decoration costs, reducing production and distribution costs

·Lower operating and market entry costs

·Reduction of number of employees due to automation of many functions, minimization of operating costs

·Expansion of activities outside their national market, their growth, ensuring a global presence of each company.

·Minimizing supply chain disruptions, reducing delays in the delivery of goods.

### Advantages for consumers:

·Save time avoiding distances to the physical store, access to foreign markets, immediate and fast transaction and fast delivery even if the product is on the other side of the world.

·Find discounts and bargains, lower product costs

·Can read opinions from other buyers to avoid unsuccessful purchase

### Disadvantages:

·Security issues, personal data breaches of client users

· Social engineering: deception of users in order to obtain information, passwords (interception), so every business must follow rules of European and national consumer protection law, company law, competition law, intellectual property, e commerce law to safely carry out transactions and inform users about the use of their data collected by the website.

·Social segregation, alienation, lack of seller-buyer contact, age and educational racism for those who cannot follow the technology trend.

### Legislative framework for electronic commerce in the European legal order, establishment of Directive 2000/31/EC "on certain legal aspects of electronic commerce. Trade in the internal market", as well as in the Greek legal order with the transposition of the Directive by the Greek legislator through Presidential Decree 131/2003.

**2.1.1. In the European legal order:** This created a need to establish a single legislative framework applicable to on-line electronic transactions (e.g.purchase of software, e-books, electronic newspapers, cinematographic works, banking, legal, medical services, webanking) and attempted to harmonise Member States' laws in order to create an electronic commerce area without national frontiers with legal certainty in cross-border transactions. The legal gap that existed was filled in principle by the enactment of Directive 2000/31/EC regulating legal issues in the internal market by electronic means (e.g. freedom of establishment and provision of services

within the European Union, law of concluded contracts, liability of service providers, out-of-court dispute settlement procedure). This Directive is called the 'E-Commerce Directive' and aims to ensure the freedom to provide services between Member States in conditions of legal certainty for consumers and businesses. The Directive introduces the principle that providers of these services are subject only to the rules of the Member State of their registered office and not of the country of the server and their e-mail address. Articles 4-5 regulate the issue of freedom of establishment, art. 6-8 commercial communication, art. 12-15 the liability of intermediary service providers and art. 9-11 Directive establishes the possibility of concluding contracts by electronic means, while demonstrating the importance of unsolicited commercial e-mail, which is linked to the protection of personal data. The greatest contribution of this Directive is in the field of electronic contracts, where all the technical steps that the consumer should follow to draw up the contract should be defined, whether it will be accessible, the possibility of correcting errors, the languages in which the contract is concluded. Article 17 introduces the institution of out-of-court settlement of disputes arising from the provision of services, in order to resolve issues arising from different national laws in cross- border transactions. Deviations from the application of these rules are found in cases related to public policy(protection of minors, violations of human dignity, combating incitement to hatred based on race, sex, nationality), public health, public security.

* + 1. **In the Greek legal order:** Directive 2000/31/EC was transposed into the Greek legal order by Presidential Decree 131/2003, with the identical object of regulation electronic commerce. Its provisions are supplemented by the provisions of the Civil Code and the Code of Civil Procedure. Article 16 thereof provides for the out-of-court conciliation procedure for the settlement of disputes. In order for this p.d. to be applied, the service provider must be established in Greece. Also, among the main pieces of national legislation applicable to electronic commerce are: Law2251/1994 on consumer protection, as recently amended by Law3587/2007 introducing European regulations on unfair commercial practices, Presidential Decree 150/2001 on electronic signatures, Law3431/2006 on electronic communications, Law 2472/1997 on the protection of individuals with regard to the processing of personal data, as amended by Law3471/2006 on data protection in electronic communications, Law2121/1993 on the protection of intellectual property, as amended by Law3057/2002 on caching etc.

### Principles underlying the Directive:

-Country of origin principle. The State where the service provider is established is responsible for its legality and its activities are governed by the law of that State.

-Beginning of unnecessary prior authorization: No approval from any authority is required for

the exercise of the activity.

-Obligation of information and transparency.

### Online transaction dispute resolution procedure. Analysis of Directive 2000/31/EC and Regulation 524/2023 on alternative methods provided by the Online Dispute Resolution

**(ODR) platform for the out-of-court resolution of disputes between traders and consumers (See webgate.ec.europa.eu/odr/)**

* 1. Article 20 of the Directive provides that Member States must ensure that such disputes are resolved expeditiously in order to put an end to any infringement and damage to consumers' interests. And respectively, Article17 of the Greek Presidential Decree provides for the possibility of taking interim protection measures before the Single-Member Court of First Instance of Athens, if there is a likelihood of infringement of rights.

The Directive itself also encourages the promotion of out-of-court dispute settlement procedures, so the Greek legislator in Article 16 of the Presidential Decree provided for the institution of amicable settlement committees between suppliers and consumers belonging to the Municipalities of the country. In addition, the usual out-of-court resolution mechanisms such as arbitration, mediation and conciliation are applied, where there is a lack of physical presence of the parties involved and the use of technical means such as emails.

https://europa.eu/youreurope/business/dealing-with-customers/solving?disputes/online-dispute- resolution/index\_el.htm

**Institution of mediation.** In particular, in the process of on-line mediation,which is widespread throughout the world, the mediator and the opposing parties communicate exclusively using electronic means (emails) or communicate through online conferences (zoom platform). Thus, the agreement of the parties to submit to mediation and any final settlement of the parties is achieved through the use of the internet, without the need for the parties to move, resulting in the whole process becoming more economical compared to going to court, but mediation skills and sufficient knowledge of technology are required.

At cross-border level, 2 out-of-court resolution networks have already been set up since 2000:

1. **EEJ-Net** (European extra-judicial network) for free out?of-court settlement of consumer disputes across borders and **b) FIN-NET**(Financial Network) in the financial sector for disputes from financial institutions or insurance undertakings.
	1. Also, EU Regulation 524/2023 "on online dispute resolution", based on Directive 2009/22/ EU on alternative dispute resolution, promotes the operation of a pan-European Online Dispute Resolution Platform, https://ec.europa.eu/consumers/odr/main/index.cfm?event=main.home2. sh-ow&lng=EL an interactive website with free online access in all the official languages of the institutions of the European Union. This platform was launched on 15.2.2016 by the European Commission and made available to the public. Both consumers and traders can forward their complaint by filling in a complaint form and once it has been forwarded to the complainant-trader, the parties should agree to transmit the complaint to the competent alternative resolution body from those listed and certified under the conditions of the Directive and registered in the Special Register of Operators. If the parties do not agree within 30 days or if the entity refuses to deal with the dispute, then the complaint is not submitted for further processing and the complainant receives

information from an advisor of the online platform on other means of protection.

In Greece the certified bodies are: a) The independent authority "the Consumer Ombudsman",

1. The Ombudsman of Banking-Investment Services, c) The European Institute for Conflict Resolution, d) and ADR-POINT IKE.
	1. If mediation fails, the individual consumer or consumer associations have no choice but to go to court against suppliers of defective goods or services. Law 2251/1994 on consumer protection enables the Greek consumer to turn against a foreign supplier in the competent Greek courts and claim compensation.
	2. **Carousel fraud-tax evasion.** For your information, in Greece, a ring of 14 companies (carousel) was detected in order to make sales through online stores, the taxes due were offset and in fact not reimbursed, with the trick of receiving fictitious invoices of expenses of non-existent suppliers. Through their action, the controlled companies distorted and created unfair competition conditions against other legitimate enterprises in the sector of trade and distribution of mobile phones and other electronic devices, as it was observed that the controlled companies were able to sell the goods at an extremely low price (below cost). The action of the above companies resulted in a loss for the Greek State, amounting to more than €14,000,000 only from non-payment of VAT for the years 2019 and 2020, while it is estimated that the total loss for the Greek State amounts to more than €30,000,000. This case is pending before the Administrative Courts.
	3. Some examples of out-of-court settlement of e-commerce disputes from Greece: a) A consumer from Luxembourg complained about a car rented online by a trader in Greece. The complaint was sent to the competent body and the matter was settled within 60 days, the trader reimbursed the entire amount to the consumer. b) A Belgian consumer submitted a report to the platform because she booked air tickets through a Greek travel agency, but due to a technical error in the electronic system, her credit card was charged double the amount. The dispute was also successfully resolved.

### Οverview of the relevant case-law of the Court of Justice of the European Union on

**electronic commerce (ECJ)**

https://curia.europa.eu/jcms/upload/docs/application/pdf/2019-06/fiche\_thematique\_- commerce\_electronique\_et\_obligations\_contractuelles\_-\_en.pdf

### Conclusion of the contract

**Judgment of 5 July 2012, Content Services (C-49/11).** The company Content Services operated a subsidiary in Mannheim (Germany) and offered various services online on its website, configured in German and also accessible in Austria. On that site, it was possible inter alia to download free software or trial versions of software which incur a charge. Before placing an order, internet users had to fill in a registration form and tick a specific box on the form declaring that they accepted the general terms and conditions of sale and waived their right of withdrawal. That information was not shown directly to internet users, but they could nonetheless view it by clicking

on a link on the contract sign-up page. The conclusion of a contract was impossible if the box had not been ticked. Next, the internet user concerned would receive an email from Content Services which did not contain any information on the right of withdrawal but, as before, contained a link in order to view the information. The Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) referred a question to the Court of Justice for a preliminary ruling on the interpretation of Article 5(1) of Directive 97/7/EC. 2 It asked whether a business practice consisting of making the information referred to in that provision accessible to the consumer only via a hyperlink on a website of the undertaking concerned meets the requirements of that provision.The Oberlandesgericht Wien (Higher Regional Court, Vienna, Austria) referred a question to the Court of Justice for a preliminary ruling. It asked whether a business practice consisting of making the information referred to in that provision accessible to the consumer only via a hyperlink on a website of the undertaking concerned meets the requirements of that provision. According to the Court that business practice does not meet the requirements of that provision, since the information is neither ‘given’ by that undertaking nor ‘received’ by the consumer and a website cannot be regarded as a ‘durable medium’.

### Consumer protection

**-Judgment of 16 October 2008, Bundesverband der Verbraucherzentralen (C-298/07).** DIV, an automobile insurance company, offered its services exclusively on the internet. On its web pages, it mentioned its postal and email addresses but not its telephone number. Its telephone number was communicated only after the conclusion of an insurance contract. However, persons interested in DIV’s services were able to ask questions via an online enquiry template, the answers to which were sent by email. The Bundesverband der Verbraucherzentralen (the German Federation of Consumers’ Associations) took the view that DIV had an obligation to mention its telephone number on its website. That would be the only means of guaranteeing direct communication. The Bundesgerichtshof (Federal Court of Justice, Germany) decided to ask the Court of Justice whether Article 5(1)(c) of Directive 2000/31/EC 16 requires a telephone number to be given. The Court held that Article 5(1)(c) of Directive 2000/31/EC must be interpreted as meaning that a service provider is required to supply to recipients of the service, before the conclusion of a contract with them, in addition to its email address, other information which allows the service provider to be contacted rapidly and communicated with in a direct and effective manner. That information does not necessarily have to be a telephone number. It may be in the form of an electronic enquiry template through which the recipients of the service can contact the service provider via the internet, to whom the service provider replies by email except in situations where a recipient of the service, who, after contacting the service provider electronically, finds himself without access to the electronic network, requests the latter to provide access to another, non-electronic means of communication.

**-Judgment of 3 September 2009, Messner (C-489/07).** Ms Messner, a German consumer, withdrew from the purchase of a laptop computer over the internet. The seller of the computer

had refused to repair free of charge a defect that had appeared eight months after the purchase. Ms Messner subsequently stated that she was revoking the contract of sale and offered to return the laptop computer to the seller in return for a refund of the purchase price. That revocation was carried out within the period provided for in the BGB (German Civil Code) in so far as Ms Messner had not received effective notice, provided for in the provisions of that Code, such as to commence the period for withdrawal. Ms Messner claimed reimbursement of EUR 278 before the Amtsgericht Lahr (Local Court, Lahr, Germany). In opposition to that claim, the seller submitted that Ms Messner was, in any event, obliged to pay himcompensation for value inasmuch as she had been using the laptop computer for approximately eight months. In its judgment, the Court found that the provisions must be interpreted as precluding a provision of national law which provides in general that, in the case of withdrawal by a consumer within the withdrawal period, a seller may claim compensation for the value of the use of the consumer goods acquired under a distance contract.

### Protection of personal data

**-Judgment of 6 October 2015 (Grand Chamber), Schrems (C-362/14).**

Mr Maximillian Schrems, an Austrian citizen, had used Facebook since 2008. Some or all of the data provided by Mr Schrems to Facebook were transferred from Facebook’s Irish subsidiary to servers located in the United States, where they were processed. Mr Schrems lodged a complaint with the Irish supervisory authority arguing that in view of the revelations made in 2013 by Mr Edward Snowden concerning the activities of the United States intelligence services (in particular the National Security Agency or ‘NSA’), the law and practices of the United States did not provide adequate protection against the surveillance by public authorities of data transferred to that country. The Irish authority rejected the complaint on the ground, inter alia, that in Decision 2000/520/ EC, the Commission had found that under the ‘safe harbour’ scheme, the United States ensured an adequate level of protection for transferred personal data. Proceedings having been brought before it, the High Court (Ireland) sought to ascertain whether that decision of the Commission has the effect of preventing a national supervisory authority from investigating a complaint claiming that a third country does not ensure an adequate level of protection and, where appropriate, from suspending the disputed transfer of data. The Court replied that the operation consisting in having personal data transferred from a Member State to a third country constitutes, in itself, processing of personal data within the meaning of Article 2(b) of Directive 95/46/EC, 27 carried out in a Member State. The national authorities are therefore vested with the power to check whether a transfer of personal data from their own Member State to a third country complies with the requirements laid down by Directive 95/46/EC (paragraphs 43 to 45 and 47). Thus, until such time as the Commission decision is declared invalid by the Court — which alone has jurisdiction to declare that an EU act is invalid —the Member States and their organs cannot adopt measures contrary to that decision, such as acts intended to determine with binding effect that the third country covered by it does not ensure an adequate level of protection. In a situation where a supervisory authority comes to

the conclusion that the arguments put forward in support of a claim concerning the protection of rights and freedoms in regard to the processing of those personal data are unfounded and therefore rejects it, the person who lodged the claim must have access to judicial remedies enabling him to challenge such a decision adversely affecting him before the national courts. In the converse situation, where the national supervisory authority considers that the objections advanced by the person who has lodged with it such a claim are well founded, that authority must be able to engage in legal proceedings. Article 25(6) of Directive 95/46/EC, read in the light of Articles 7, 8 and 47 of the Charter, must be interpreted as meaning that a decision adopted pursuant to that provision, by which the Commission finds that a third country ensures an adequate level of protection, does not prevent a supervisory authority of a Member State from examining the claim of a person concerning the protection of his rights and freedoms in regard to the processing of personal data relating to him which have been transferred from a Member State to that third country when that person contends that the law and practices in force in the third country do not ensure an adequate level of protection (paragraphs 58, 59, 63 and 66 and point 1 of the operative part). The term ‘adequate level of protection’ in Article 25(6) of Directive 95/46/EC must be understood as requiring the third country in fact to ensure, by reason of its domestic law or its international commitments, a level of protection of fundamental rights and freedoms that is essentially equivalent to that guaranteed within the European Union by virtue of that directive, read in the light of the Charter (paragraphs 73, 75, 76 and 78). The safe harbour principles are applicable solely to self- certified United States organizations receiving personal data from the European Union, and United States public authorities are not required to comply with them. In addition, Decision 2000/520/EC enables interference, founded on national security and public interest requirements or on domestic legislation of the United States, with the fundamental rights of the persons whose personal data is or could be transferred from the European Union to the United States, without containing any finding regarding the existence, in the United States, of rules adopted by the State intended to limit any interference with those rights and without referring to the existence of effective legal protection against interference of that kind. Furthermore, the Commission exceeded the power conferred upon it in Article 25(6) of Directive95/46/EC, read in the light of the Charter, by adopting Article 3 of Decision 2000/520/EC, which is therefore invalid (paragraphs 82, 87 to 89, 96 to 98 and 102 to 105 and point 2 of the operative part).

### Advertising

**-Judgment of 4 May 2017, Luc Vanderborght (C-339/15)** Mr Luc Vanderborght, a dentist established in Belgium, advertised the provision of dental care services. He installed a sign stating his name, his designation as a dentist, the address of his website and the telephone number of his practice. In addition, he created a website informing patients of the various types of treatment offered at his practice. Finally, he placed some advertisements in local newspapers. As a result of a complaint made by the Verbond der Vlaamse tandartsen, a professional association of dentists,

criminal proceedings were brought against Mr Vanderborght. Belgian law prohibited all advertising for the provision of oral and dental care services and imposed requirements of discretion. Proceedings having been brought before it, the Nederlandstalige rechtbank van eerste aanleg te Brussel (Brussels Court of First Instance (Dutch-speaking), Belgium) decided to submit a question to the Court of Justice on the matter. The EU legislature has not excluded regulated professions from the principle of the permissibility of online commercial communications laid down in Article 8(1) of that directive. Although that provision makes it possible to take into account the particularities of health professions when the relevant professional rules are drawn up, by supervising the form and manner of the online commercial communications with a view, in particular, to ensuring that the confidence which patients have in those professions is not undermined, the fact remains that those professional rules cannot impose a general and absolute prohibition of any form of online advertising designed to promote the activity of a person practicing such a profession.

# Digital Economy, E-commerce along the Silk Road, and Online Dispute Resolution

## Essa Ahmad Ali Al-Nassr, First Vice President of the Court of Appeal of the State of Qatar



**In the name of the God, the Most Gracious, the Most Merciful.**

**Respected Session Chair,**

**Honorable Participating Justices and Judges,**

**Ladies and Gentlemen,**

Peace be upon you and the mercy of the God and His blessings...

I am very pleased to have the opportunity to address you this afternoon, and I will try to be brief to allow other colleagues to make the most of the session's time.

To address the idea proficiently, we cannot isolate contemporary reality from its historical roots. The Silk Road was a bridge and a foundation between the early Chinese ancestors and my Arab ancestors, among other nations. It served as a vital basis for the theory of reciprocal interests in overseas international relations, primarily through its main element (trade).

Without exaggeration, commercial interests play a fundamental role in establishing human dialogue, respecting cultures, religions, and coexistence. This has made the history of Sino-Arab relations illustrious and placed mutual respect and cultural dialogue at its core.

In this vibrant context, our world today is propelled by the high-paced momentum of digital innovation, completely transforming our lives and posing challenges while solving problems for us. Among its aspects is the relevance to judges, where the key lies in adapting to the changing dynamics of life and the digitization of all aspects of applied services, including judiciary.

Ladies and gentlemen,

In the State of Qatar, we have realized the importance of digitization in our social and professional lives. The resistance to traditional judicial procedures did not persist in the face of these life changes. Hence, Qatar's interest in enhancing digitization has emerged to be the foundation of the knowledge economy embraced by Qatar Vision 2030 as its primary driver.

Our colleagues in the Qatar courts have swiftly embraced smart technological means and tools to be the constant driving force for the speedy resolution of disputes in the courts, shortening the time frame without compromising the quality standards of litigation outcomes.

Recognizing Qatar's belief and the judicial authority in prioritizing commerce as the main driver of the overall economy, we sought to rely on remote visual trials, hearing testimonies, and managing lawsuits among other supportive means.

We are supported by the fact that Qatar has ranked first globally in the Digital Accessibility Rights Evaluation Index for 2020 (DARE INDEX) issued by the Global Initiative for Inclusive Information and Communication Technologies (G3ict). This index measures the progress of a country in providing information and communication technology for everyone. Additionally, Qatar ranked second globally in mobile internet speed according to the Ookla Speedtest Global Index. Thus, the digital infrastructure in Qatar is a valuable asset for us to advance electronic litigation projects and other supporting services that enable us to achieve the values and objectives of complete justice, especially in terms of regional and global trade and foreign direct investment.

In conclusion...

The national achievement in the technological field, including that of our friendly People's Republic of China, being one of the most important innovators with its courts among the leaders in the digital litigation trend is rather remarkable. However, the existence of gaps and variations in state decisions along trade routes, including the Silk Road, poses a challenge to the integration of our efforts. Therefore, we see no alternative to the primary judicial and technical cooperation, contributing to the transfer of experiences, filling gaps, and helping us achieve coherence in the procedures that will lead our national economies in the cycle of legitimate international interests.

Thank you and peace be upon you.

# Issues on Evidence Collection of Cross-border Crime

## Zhang Haibo, Justice, President of

**Guangdong High People’s Court of the People’s Republic of China**

### Honorable President Zhang Jun, Justices, Delegates, and Distinguished Guests,

Good afternoon, everyone! It is my pleasure to exchange views with you on the issue of “evidence collection for cross-border crimes”.

With the continuous evolution of cross-border crimes and the continuous deepening of international criminal judicial cooperation, evidence collection for cross-border crimes has increasingly become an important issue of general concern to the judicial bodies of every country. The cross-border factor separates the legal basis for obtaining and admitting evidence, which serves as the core feature of cross-border criminal evidence collection. However, it also results in a series of difficulties. China has always attached great importance to combating cross-border crime and has actively fulfilled its international obligations in the areas of combating cross-border organized crimes, drug-related crimes and corruption-related crimes. Through sustained legislative and judicial practical activities, China has developed a relatively comprehensive set of norms and practices in the areas of the collection of evidence from abroad and examining and reviewing the same as well as the enhancement of international cooperation in combating cross-border crime.

### Provisions of Laws Regarding the Examination and Admission of Evidence Collected from Abroad

*China’s Criminal Procedure Law* stipulates that all materials that may be used to prove the facts of the case are evidence. Evidentiary materials from abroad can be used as evidence in the adjudication of criminal cases as long as they are able to prove the authenticity of the case and comply with the statutory requirements for evidence, and thus shall have the same effect as evidence from within the country. In this regard, the method of examination varies depending on the subject providing the evidence. With regard to overseas evidence obtained by the judicial authorities through criminal judicial cooperation, the court is required to examine whether the crime investigation authority has requested international criminal judicial assistance in accordance with legal procedures; the crime investigation authority shall provide explanation of the source of the evidence as well as the processes of keeping custody of and transferring the evidence. With regard to overseas evidence provided by the parties to the litigation, the defending party or the appointed litigation attorney, the court shall examine whether the evidence has been certified by notary organs in the country of origin, authenticated by the national diplomatic authority of the country of origin or its authorized organs, and certified by the Chinese embassy or consulate there, or whether

certification formalities stipulated in the relevant treaties concluded between China and the country of origin have been complied with. After going through the aforementioned examination procedures, the overseas evidence shall have the corresponding qualification as evidence. Whether or not the contents of the evidence is admissible requires the court to conduct a substantive review in terms of objectivity, relevance and legality. China’s Criminal Procedure Law also attaches particular importance to the examination of the legality of evidence, requiring that the collection of evidence shall be carried out in accordance with legal procedures, that no one should be forced to incriminate himself or herself, and that rules for the exclusion of unlawfully-obtained evidence have been established. Due to different evidence collection procedures among different countries, the legality of overseas evidence needs to be determined by taking into consideration the specific circumstances of different cases.

### Practical Exploration of Chinese Courts in Evidence Collection on Cross-border

**Crimes**

China’s Criminal Procedure Law stipulates that evidence shall not be used as the basis for a verdict unless it has been verified by court investigation procedures such as presentation, identification, and cross-examination in court, and that evidence from abroad shall also be cross- examined in court. Guangdong Province has conducted frequent international exchanges, and courts in Guangdong have tried a larger number of cross-border crime cases. We have given special attention to three issues in our practice. The first is the issue of the conversion of overseas evidence. For evidence provided by overseas judicial institutions, if the overseas provider imposes no special limitations, the court may use it directly as evidence. If the overseas provider of the evidence has special requirements for the use of the evidence, the investigation authority shall, in response to the limitations and special requirements of the original overseas evidence, convert the process of collecting the evidence and the specific contents of the evidence into a statement of work, which shall be cross-examined in the trial. The second issue is the appearance of relevant persons in court. The appearance of investigators, witnesses, appraisers and interpreters in court is of great significance in ensuring a substantive and fair trial. Due to the different provisions in the laws of different countries with respect to the qualifications for testifying, the rights and obligations of the persons testifying, the immunity commitment offered to the informants, and the protection measures, etc., cross-border testifying has also been a difficult issue in judicial practice. At present, we are exploring the possibility of having relevant witnesses testify by video, subject to the laws of the countries concerned. Network information technology makes it unnecessary for witnesses to be physically present in the courtroom, thus relieving them of worries and burdens and allowing them to complete trial investigations and cross-examinations in a simple and speedy manner. We believe that, on the precondition of mutual respect for judicial sovereignty, strengthening cooperation through the Internet can enable courts to deliver justice in a more efficient and convenient manner.

Thirdly, we are actively assisting international judicial organizations in collecting evidence in China. With the review and consent of the Supreme People’s Court, the relevant courts, in accordance with the provisions of the Law on International Judicial Cooperation in Criminal Matters, have assisted in the execution of many requests for video evidence collection made by the countries concerned and have presented in person to supervise such collection, thus contributing positive efforts to jointly combat cross-border crimes.

### China’s Efforts to Promote Cross-border Crime Evidence Collection through

**International Judicial Cooperation**

With the accelerated evolution of globalization and the rapid development and application of network information technology, new types of cybercrime continue to emerge and evolve rapidly, and traditional crimes such as fraud, gambling, money-laundering, drug trafficking, embezzlement and bribery are also more closely integrated with the Internet, so that cross-border crimes, especially cross-border cybercrime, will become the new norm in criminal offenses. Effectively combating cross-border crime requires bridging the differences between different criminal evidence systems of various countries and more in-depth judicial cooperation. China highly values international judicial cooperation in evidence collection of cross-border crimes. To date, China has signed bilateral treaties on judicial cooperation in criminal matters with more than 60 countries. In order to better perform its obligations under international treaties and strengthen international cooperation in combating cross-border crimes, China promulgated International Criminal Judicial Assistance Law of the People’s Republic of China in October 2018, which sets clear provisions on international cooperation in various aspects of cross-border crime cases, including “investigating and collecting evidence” and “arranging witnesses to testify or assisting in investigations”. The implementation of this Law has provided clear guidance and legal and institutional support for China’s international judicial assistance in criminal matters with other countries.

China has also been consistently committed to promoting enhanced cooperation among countries around the world and supporting the United Nations in playing a leading role in cyberspace governance. In order to strengthen the effectiveness of the crackdown on cybercrime and form international synergy, the United Nations officially launched the drafting of the United Nations Convention against Cybercrime in 2019, and the basic framework of the Convention has now been completed. Among the rules of “international cooperation”, the draft Convention emphasizes the strengthening of mutual judicial cooperation and law enforcement collaboration and proposes a number of specialized initiatives to deal with possible obstacles in the collection of evidence on cybercrime and cross-border collection of evidence, thus establishing guidelines for international cooperation in the collection of evidence on cross-border crimes. For example, at the level of the specifics of judicial cooperation, on the one hand, the traditional working method of the judicial cooperation mechanism is maintained, while on the other hand, the distinction is made between

collection of data evidence and data preservation, so as to ensure that the data involved in the cases are saved in a timely manner while respecting the sovereignty of the countries concerned.

The draft Convention represents the initial consensus reached by all Member States, including China, on issues related to combating cross-border crime in the cyber era. Here, I would like to advocate that all countries should continue to promote the coordination between domestic and international laws, the coordination between criminal procedure law and emerging digital law, as well as the collaboration between judiciary institutions and international organizations and relevant third-party entities, so as to make their own contributions in making the draft Convention a widely- accepted international convention, and to join hands in solving the problem of cross-border evidence collection within a common framework. Chinese courts are also willing to strengthen exchanges and cooperation with judicial institutions around the world and to contribute its judicial wisdom and strength to global crime governance.

Thank you!

# Issues on Evidence Collection of Cross-border Crime

## Sonia Marlina Dubón Villeda, Magistrate of the Supreme Court of Justice of the Republic of Honduras

**Silk and walking route.**

“*The human being is neither a stone nor a plant, and cannot justify himself by his mere presence in the world. The human being is human only because of his refusal to remain passive, because of the impulse that projects him from the present to the future and directs him toward things with the purpose of dominating and shaping them. For human beings, existing means remodeling existence. Living is the will to live”*. Simon de Beauvoir.

Good morning to all of you, I join in the greetings of the president of the Supreme Court of Justice of Honduras. I thank the Judiciary of China, its president Zhang Jun, for having turned its gaze towards Honduras and inviting us to this important International Forum on International Cooperation. Starting in October 2023, Honduras walks hand in hand with China.

With enthusiasm, the Judiciary of Honduras joins the initiative of the People's Republic of China, which has rightly been called “Building the Maritime Silk Road Together.” And without a doubt, it has motivated this important “International Forum of Judicial Cooperation”, in which we will seek to promote precisely effective coordination between supranational jurisdictions at the highest level, between the countries that are or will be part of the design of transparency standards and justice in the transit of people, goods and services, and in the relationships of agreement and reciprocity that the construction of this important trade route entails.

In our legislation there is some complexity in the definition of cross-border crimes, since this discipline is not clearly defined with criminal rubrics, however, the accelerated transformation of society, and the parallel development of international law, have allowed us to subscribe to conventions that address these crimes, and due to the commitments and obligations undertaken, our domestic criminal law has had to adapt to incorporate international standards of typical framing and searches and construction of supranational cooperation to identify complex networks of transnational crime.

Our tax institutions, in charge of applying customs legislation and compliance with obligations at different levels, have a presence in the border areas for this purpose and to support the state's prosecution of the crime of smuggling, tax fraud, illicit trafficking of cultural goods and others. related to this matter.

These crimes can be related both to individuals and, above all, to organized crime, and as such, a catalog of crimes of this nature that can transcend borders has been determined in the international order: such as transnational bribery of public officials, human trafficking, illicit human trafficking, sexual exploitation, organ trafficking, child sexual exploitation, arms and drug trafficking, terrorism crimes, crimes against collective security, crimes against transportation and communications services, money laundering, smuggling, computer crimes, and cybercrimes.

These behaviors are practically classified as “cross-border” crimes, and we consider the impact that these criminal actions could have when we warn that their effects can be very harmful beyond our national borders — a common aspect when we talk about this type of crimes—we can appreciate that regardless of the terminology used, our State recognizes in these activities the possibility of prosecuting and punishing them in accordance with the law.

Starting from the fact that the Silk Road construction project itself presents a commercial perspective, we will affirm that the prosecution of illicit acts is not limited to the fact that the criminal effect physically crosses the borders, which would be perfectly visible or in any case perceptible. Through the use of radars, but what has had the most impact in recent times is virtual crime, through which computer crimes or cybercrimes take over the confidentiality of personal data, secrets or confidential data of computer adulteration companies, the tampering of goods and services, the intellectual appropriation of copyrights and of course they attack the security systems of national states, commit financial and banking fraud and support illicit child pornography trading activities.

To counteract this crime, our country has taken advantage of regional cooperation, which is fundamental, and above all, mutual judicial assistance, which includes the participation of agents from the States involved, whenever an international requirement or request for assistance is appropriate. Mutual that has included measures aimed at investigation, border observation and cross-border persecution.

The Judicial Branch of Honduras considers that special legislation, and especially international cooperation, are essential elements to strengthen security and protect international supply chains, since eventually the fight against transnational crime greatly facilitates international trade, and this will be essential in the construction and development of the Maritime Silk Road, for the associated countries in this important initiative

I close my intervention by making my own the phrase of the president of the Supreme Court of the People's Republic of China “THE RULE OF LAW IS THE BEST BUSINESS ENVIRONMENT”.

# Issues on Evidence Collection of Cross-border Crime

## Musaev Nurlan, Deputy Chairman of the Supreme Court of the Kyrgyz Republic

**Dear Heads of Supreme Courts of the countries participating in the International Forum on Judicial Cooperation "Maritime Silk Road", Dear Forum participants, ladies and gentlemen!**

First of all, let me express my sincere gratitude to the Supreme Court of the People's Republic of China for the excellent organisation of this event and the opportunity to participate in it, and express my high respect to all participants.

The Kyrgyz Republic is a landlocked country in Central Asia.

China is considered one of the main strategic partners with which Kyrgyzstan shares a land border, being one of the ways for the Kyrgyz Republic to reach the outside world, which is confirmed by our participation in this event.

Dear participants of the forum, today great changes are taking place all over the world, humanity is entering a new era of rapid development and large-scale transformations. Such processes and phenomena as multipolarity, economic globalisation, informatisation of society, transformation of the system of governance and world order, etc. are widely developing.

At the same time, the situation in the sphere of international and regional security is becoming increasingly complicated, and global challenges and threats are multiplying.

It must be stated that the process of globalisation, along with positive factors affecting the liberalisation of economic and humanitarian contacts, the development of international transport and trade, contributes significantly to the expansion of transnational crime, including cross-border crime.

Under these conditions, no State can independently confront the growing threats to national security from the activities of international organized crime, which has demonstrated its ability to infiltrate social, political and governance structures and to operate across national borders.

It should be emphasised that the Central Asian region, in which the Kyrgyz Republic is located, is situated at the crossroads of important trade routes and geopolitical interests. Therefore, criminal networks pose many challenges that require immediate attention and adequate strategic measures.

In addition, the complex interrelationship of cross-border criminal activities, which underlines the global nature of organised crime, necessitates the development of a set of coordinated measures to combat it.

Realising this, the Kyrgyz Republic has joined the international community and is successfully transforming itself within it.

Kyrgyzstan is actively cooperating with other countries in combating cross-border crime in all its manifestations, such as combating illicit trafficking in narcotic drugs, psychotropic substances and their precursors, smuggling, trafficking in persons and illegal migration, as well as crimes committed through the use of modern information technologies, as we are well aware that cross-border crime is not so much a national problem as an international one.

Obviously, the commission of offences affecting the interests of more than one State, as well as the presence of a foreign element, significantly complicates the investigation of such cases. Difficulties arise in the process of the necessity to collect evidence in the territory of a foreign State, since usually the investigative actions of the competent authorities of a State are limited to its territory, whereas for the normal investigation and consideration of criminal cases with a foreign element it is necessary to collect evidence and conduct procedural actions in the territory of another State. It follows that the main problem of criminal cases with a foreign element is the problem of jurisdictions, more precisely the conflict ("collision") of jurisdictions and extraterritorial effect of foreign criminal procedural law in the sphere of national jurisdiction.

The Kyrgyz Republic is constantly working to expand international cooperation, strengthen and improve the legal and regulatory framework by acceding to the main treaties concluded within the framework of the UN and its agencies, including the UN Convention against Transnational Organized Crime of 15 November 2000 and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, of 15 December 2000, the Protocol against the Smuggling of Migrants by Land, Sea and Air of 15 December 2000, and the Protocol against the Smuggling of Migrants by Land, Sea and Air of 15 December 2000, The UN Convention against Corruption of 10 December 2003, the International Convention for the Suppression of the Financing of Terrorism adopted by UN General Assembly resolution 54/109 of 9 December 1999, and the implementation of international law into national legislation. Activities are carried out to conclude agreements on cooperation in criminal matters and to develop partnerships with neighbouring and non-CIS countries.

Within the framework of inter-State co-operation, joint operational and preventive measures and special operations are actively carried out to track down criminals, combat illicit trafficking in drugs, weapons, explosives, ammunition, illegal migration, human trafficking, suppress the smuggling of raw materials and cultural property, the activities of international criminal groups in transport, etc., and co-operation is carried out with international partners to collect evidence, provide testimony and share information to facilitate investigations and bring perpetrators to justice.

Of course, organised crime does not stand still; it is constantly transforming, adopting new methods and technologies, diversifying the ways in which it finances, communicates and operates.

Overcoming the challenges posed by organised crime is an extremely difficult task.

Thus, in the process of combating this evil, lessons should be learnt from the best practices of international experience and the issues of international cooperation aimed at improving the effectiveness and completeness of legal assistance in criminal cases, the performance of procedural and judicial actions in the execution of instructions from foreign states, as well as the legal validity of evidence obtained in the territory of a foreign state should be constantly improved.

States should seek new ways to share information and evidence and work together within international organisations to develop common strategies and actions to combat cross-border crime in both pre-trial and trial proceedings.

There is a need to strengthen cyber security and co-operation in this area, as financial crime and cybercrime are invariably interlinked.

The Kyrgyz Republic clearly follows these principles.

Our goal is to build a strong and independent state, comfortable for living, in which the real protection of people's rights and freedoms and their security is ensured.

In that regard, participation in the global maritime cooperation platform "Maritime Silk Road", which covers more than 20 countries in Asia, North Africa and Europe, is invaluable to us and opens up new opportunities for expanding the horizons of international cooperation.

I am confident that the outcome of today's open and informative dialogue will make it possible to define new progressive approaches to combating international organized crime.

I thank you for your attention.

# New Cybercrimes, Old Laws

## Gibuma Gibbs Salika, Chief Justice of the Independent State of Papua New Guinea

Technology and its application in enhancing the quality of life for our people in Papua New Guinea (PNG) has its challenges. These realities are based on how people interact with each other through the lens of complying with the law for the preservation of good order. While the value of technology including the ushering in of what has been defined as the digital era is tremendous, it is necessary to ensure that behaviours which are counter culture to law is addressed as captured in legislation. In PNG the Cybercrime Code Act 2016 was passed “to establish acts or ommissions constituting offences committed through the use of information and communication technology or cybercrime, and for related purposes”.

When we examine why laws are made, which is universally accepted for the regulation of behaviour which is deemed appropriate and anticipated to be compliant with the constitution, we are able to understand the importance of why cybercrimes have become a topic of much discussion. I intend to approach this topic today from a practical level because I believe there are opportunities for us to explore how best our Judiciaries tackle cybercrimes while also dealing with cases of what we shall call old laws.

Concepts such as harassment which happens and impacts a person without the use of a digital instrument at times appears inconsistent with harassment which is done via a smart phone, computer or other electronic device. I am mindful that societal norms prevail in large part to what one may consider acceptable and with technological usage there have been concerns which raise the issue as to whether cybercrimes and traditional laws are so different that they may warrant different approaches to how courts tackle the problem.

All of us can accept that cybersecurity is necessary to safeguard data and protect our judiciaries from cyberattacks which compromise our ability to deliver justice. However, it is necessary to establish that old laws which have existed prior to cybersecurity legislation are still relevant and are not counter culture to the new legislation which are in place in the 21st century. The Budapest Convention “describes cybercrime as offences relating to computer-related data, fraud and network security as well as copyright infringement.”1

According to news reports in PNG, there are on average 10 cases of cybercrimes reported daily to the police2. This indicates that there is a recognition by persons in our society that they have recourse through the judicial system in relation to threats and actual offenses emanating from

1.[https://www.lowyinstitute.org/the-interpreter/developing-png-s-cybercrime-policy-local-contexts-global-best-practice](http://www.lowyinstitute.org/the-interpreter/developing-png-s-cybercrime-policy-local-contexts-global-best-practice) [2.https://www.postcourier.com.pg/several-cyber-crime-cases-before-court/](http://www.postcourier.com.pg/several-cyber-crime-cases-before-court/)

cybercrimes. This augurs well for compliance in terms of persons not sitting back and accepting the past view that may have been espoused by some that when there are cybercrimes committed against them, they were limited in what they could do according to law.

There was a 2020 case which resulted in a conviction in the National Court in which a prisoner used a fake account in prison to make threats against the Prime Minister. We have resources through the detection mechanism of the Police that provided the foundation for building the case that resulted in this successful prosecution. It is therefore relevant to note that in addressing cybercrimes in the court, without the various law enforcement agencies having the capability to gather evidence and assist in building a good case that can be prosecuted, the court would be constrained in what it can do.

It is argued that developments in the law usually fall behind the advances of technology3. In PNG we have seen this reality and there was a time when there were scams involving people being bilked out of money in the hope of getting more money from schemes which never materialized in what it promised. Such activities happened by the use of phones covering multiple jurisdictions prior to the introduction of legislation which made these things offences. This is an example that demonstrates the courts must be aware of the changing dynamics of the times we live and be ready to address these challenges as they present themselves in our courts.

The academics may wish to debate on whether there is new legal doctrine that must be reshaped with cybercrimes and old laws4. I am open to getting considered views on that point but I will say that we cannot pretend in our experiences on the bench that at times some of the recent matters that are brought before us that appear seemingly novel in character can at times be perplexing to unravel given the complexity of technology and human rights and also in certain instances the lack of clarity in legislation which then become a sample of court theatrics for a distinguished Judge to preside over and make a determination.

Given my time on the bench which covers over three decades, I can say with certainty there have been radical changes in cases that come before the court that include significant technological components in criminal matters. These cybercrimes did not exist when I was first appointed to the bench and our judiciary has evolved to be able to handle any and all manner of cybercrimes that come before us. It is known that cybercrimes affect us all when we consider online transactions which are due to fraud that result in financial institutions passing the cost to all consumers in their attempt recover such losses5.

With the proliferation of Artificial Intelligence (AI) including ChatGPT which is an AI powered language model used by various sectors we can see yet again how technology is rapidly changing with legislation which has fallen behind, trying to catch up and the courts then asked to help. We

3.Manning, Colin, Old Laws, New Crimes: Challenges of Prosecuting Cybercrime in Ireland (February 8, 2016). <http://dx.doi.org/10.2139/>

ssrn.2729204 4.https://heinonline.org/HOL/LandingPage?handle=hein.journals/gmlr9&div=16&id=&page= 5.https://ieeexplore.ieee.org/abstract/document/6061188

are now in the age of automated hacking with the use of AI which creates significant challenges for law enforcement and prosecutors added to the cross-border component given many of these types of crime may not originate in your jurisdiction but wreak havoc in your jurisdiction nevertheless. We know that cybercrime transcends borders6 and judiciaries should share ideas such as in this session on how to address such activities.

We know that at the United Nations level there is not a consensus on cybercrime and this in itself presents challenges for our judiciaries given the international impact and cross border realities of cybercrimes and cyberattacks7.

I am sure that we can all appreciate that this session will allow us to engage through discussion including questions on this topic of cybercrimes and how courts address these challenges when technology has moved far past the legislation that forms what we may call old laws. Ransomware attacks plagued some of our judiciaries in the pacific in the past four years. They continue to be a problem for some courts bringing all electronic activity to a halt due to the inability to prepare and/ or combat its effect on our Information Technology Systems.

This certainly presents an opportunity at a regional level in our jurisdictions to develop a rapid response approach that could assist in mitigating damage that our judiciaries face from cybercrimes. And while this is not the focus of this presentation, I thought it was important that I mention it for consideration.

There are also concerns that some cybercrime laws may adversely impact free speech. This is yet another conundrum that permeates dialog when it come to new cybercrimes and old laws. When you have laws which may appropriately create penalties for online criminals it may face criticism where it takes more control over the social media and potentially affects free speech8. Such litigation to make constitutional determinations would likely be heard before courts to make a decision as to validity of legislation. There is no doubt a wide scope of areas for which we should ponder carefully as we critically analyse how judiciaries can improve access to justice given new cyber security threats which may or may not be crimes in your jurisdiction and which may exceed the ability of existing laws.

In June 2021, the Papua New Guinea Centre for Judicial Excellence (PNGCJE) of which I am the Chairman, hosted in collaboration with the Council of Europe a training course on Cybercrime and Electronic Evidence for Judges. We have recognized the importance of facilitating training for Judges and Magistrates in this area to prepare them to handle matters as they are brought before the courts. The Cybercrime Code Act 2016 and Criminal Code Act of PNG are critical to combatting cybercrime in PNG. I anticipate that the PNGCJE will be facilitating a few more courses next year for Judges and Magistrates on the topics of Cybercrimes, Artificial Intelligence and Electronic

6.https://dig.watch/topics/cybercrime

7.[https://www.coe.int/en/web/cybercrime/-/the-global-state-of-cybercrime-legislation-as-at-january-2023-](http://www.coe.int/en/web/cybercrime/-/the-global-state-of-cybercrime-legislation-as-at-january-2023-) [8.https://www.aljazeera.com/news/2023/7/28/rights-groups-opposition-slam-proposed-cyber-crime-law-in-jordan](http://www.aljazeera.com/news/2023/7/28/rights-groups-opposition-slam-proposed-cyber-crime-law-in-jordan)

Evidence.

Old laws are required to be repealed, amended or updated to keep up with modern times. Our ability to meet the rapid changes of these times will create certainty for court users. The pace at which technology moves in application in the world is such that the law may struggle to keep up with it9.A decade ago, empirical information on cybercrime was scarce or limited in most of our jurisdictions10 Laws with reference to cybercrime are still emerging11.

With more data storage capacity available now, more than ever than in our history and this information potentially accessible by criminals who are hacking and using remote methodologies to illegally attempt to access, there are inherent risks associated with how we are functioning in the global community. In this vein, it is necessary to have robust laws to protect the rights of persons in ensuring that preservation of those rights is maintained and not eroded due to harmful illegal activities emanating from the use of digital means inclusive of technology.

It is not inconceivable that a complainant may go to make a complaint at a police station in remote part of the country where they may make a report to the police only to be told they should just turn off the computer12. Enforcing existing laws which do not address the reality of where we are in the digital age does not engender public confidence. The use of social media and mobile phones in PNG is regulated and as the courts hear more cases based on cybercrime legislation our jurisprudential development informs in providing metrics that can be examined with regard to the effectiveness of which the legislation has been in addressing societal behavior that are considered norms.

Cybercrime will continue to be a challenge in our realities in PNG and I dare say throughout the world13. Courts have to be able to keep up with these changes to be relevant and effective in the administration of justice and in being able to uphold the constitution. There is an expectation that with the new cybercrimes that are happening which correlates with appropriate legislation and old laws that are modernized to keep up with technology, our courts will be able to handle anything that it is required in the course of cases that are brought.

We have seen what digitalization has meant for our country over the past few decades in helping to transform our economy and provide a better quality of life for people within our jurisdiction. We also recognize that the court will continue to enhance its capacity to deal with cases as they are filed as we tackle new cybercrimes in the 21st century.

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[13.http://cpi.kagoshima-u.ac.jp/publications/southpacificstudies/sps/sps38-2/southpacificstudies38-2-pp39-72.pdf](http://cpi.kagoshima-u.ac.jp/publications/southpacificstudies/sps/sps38-2/southpacificstudies38-2-pp39-72.pdf)

# Issues on Evidence Collection of Cross-border Crime

## Luis Fernando Damiani Bustillos, Justice, Member of the Constitutional Chamber and President of the Ibero-American Institute of Higher Judicial Studies of Bolivarian Republic of Venezuela

### 1.- Importance of combating cross-border crime

The ongoing regional and multilateral integration globally has led to a growing movement of citizens, bringing forth positive outcomes. However, this integration has also given rise to detrimental effects, particularly in the form of cross-border crime. This reality necessitates a thorough analysis of available legal mechanisms to enhance effectiveness in combating cross-border crime—a challenge that no country can afford to overlook.

The battle against both domestic and cross-border crime is fundamental for the consolidation, promotion, and protection of legal, economic, political, and social security on a broad scale. This imperative extends to both domestic and international spheres, highlighting the interconnected nature of security in today's interconnected world.

### 2.- Importance of evidentiary activity for punitive intervention

In our legal studies, it is a common principle that the existence of evidence to support the prosecution is a cardinal basis for criminal liability and its legal consequences.

### 3.- Judicial cooperation in the fight against cross-border crime

Solidarity, reciprocity, and international cooperation call for ongoing collaboration to effectively collect evidence and elements needed to prove crimes, especially those with cross-border implications due to their international impact.

In this context, it's important to note that Article 152 of the Constitution of the Bolivarian Republic of Venezuela outlines the fundamental principles guiding the country's international relations. These include independence, equality among states, self-determination, non-intervention in internal affairs, peaceful resolution of international conflicts, cooperation, respect for human rights, and solidarity among peoples in the pursuit of emancipation and global well-being.

In the context of the "Taking of Evidence," which also addresses cross-border crimes, Article 61 of the Organic Code of Criminal Procedure outlines the authority of the Public Prosecutor's Office, facilitated through investigative police bodies, in acquiring and preserving evidence. This power extends even when the accused is not within the territory of the Republic.

### 4.- International cooperation and assistance in the field of cross-border organized crime offenses cross-border organized crime

Special criminal legislation, in turn, directly addresses international cooperation, particularly in the context of cross-border crimes. For instance, Article 74 of the Organic Law against Organized Crime and the Financing of Terrorism outlines directives for international collaboration aimed at combating organized crime groups and tackling the financing of terrorism. This provision explicitly details:

1. Uncover and locate individuals involved in criminal activities, and collect the required evidence for prosecution.
2. Disrupt the operations of organized crime and terrorist financing groups.
3. Strip organized crime groups of the gains from their illicit activities using precautionary measures such as seizure, confiscation, or forfeiture.

Article 75 of the Organic Law against Organized Crime and Terrorist Financing addresses the communication and exchange of information, implying:

1. Information on stolen or stolen goods in order to prevent the illicit sale or legalization of stolen or stolen goods.

 2. Information on typologies or methods for forging passports or other documents, on trafficking in persons, arms, drugs, money laundering and terrorist financing, as well as information on the concealment of goods in customs matters or any other activity of organized crime groups.

As evident, the communication and exchange of information extend to the concealment of goods in customs matters—a critical aspect for the cutting-edge and successful Maritime Silk Road and, by extension, international trade. This also encompasses any other activities of organized crime groups, which typically pose a higher degree of harm compared to crimes committed by individuals.

Concerning judicial assistance, Article 76 of the Organic Law against Organized Crime and Terrorist Financing stipulates reciprocity in investigations, prosecutions, and judicial proceedings when requested by another state. This aligns with treaties signed and ratified by the Bolivarian Republic of Venezuela.

In this context, the same law, along with other domestic regulations, outlines the authority of the Public Prosecutor's Office. This authority operates in collaboration with the Ministry of People's Power, which holds jurisdiction in foreign affairs, to handle requests for mutual legal assistance.

The Venezuelan legal system also allows for the potential establishment of international cooperation ties with other countries or international organizations. This collaboration is aimed at forming teams to conduct investigations into the criminal acts outlined and penalized in the Organic Law against Organized Crime and the Financing of Terrorism.

Regarding mutual assistance, Article 79 of the Organic Law against Organized Crime and the Financing of Terrorism specifies the following:

Mutual assistance in criminal matters shall be afforded for the following measures:

1. Receiving testimonies, statements, or taking interviews from persons.
2. Carry out inspections, seizures, and preventive securing.
3. Providing information, evidence, and evaluation of experts.
4. Providing certified copies of relevant documents and files, including public banking and financial documents, as well as corporate and commercial documents of commercial companies.
5. Facilitating the voluntary appearance of persons in the requesting State.
6. Executing service of decisions, documents, and measures relating to legal proceedings.
7. Obtain samples of bodily substances, deoxyribonucleic acid (DNA) results, or other scientific other scientific analysis.

8. Examining objects and places.

9. Any other action that may arise and is authorized by the Venezuelan legal system.

If the presence of a person is either not possible or deemed undesirable in the requesting State, videoconferencing may be employed. The principle of reciprocity between States is to be considered in the execution of all such proceedings.

### 5.- Extradition as a mechanism for international cooperation

In addition to facilitating judicial cooperation and assistance in cross-border evidence, the Bolivarian Republic of Venezuela has established various legal institutions to combat impunity. One such mechanism is extradition, which operates within a comprehensive national and international regulatory framework.

In this regard, it is particularly important to note Article 271 of the Constitution, according to which states that:

In no circumstance shall the extradition of foreigners, held accountable for crimes such as delegitimization of capital, drug offenses, international organized crime, acts against the public assets of other States, and violations of human rights, be refused. Judicial measures designed to prosecute crimes against human rights, public assets, or drug trafficking will not face prescription. Additionally, pursuant to a court ruling, assets derived from activities linked to crimes against public property or drug trafficking will be subject to confiscation.

The proceedings related to the aforementioned crimes will be public, oral, and expeditious, ensuring due process. The competent judicial authority is vested with the authority to issue necessary preventive precautionary measures against the properties owned by the accused or their intermediaries, ensuring the eventual imposition of civil liability.

### Closing words

It's clear that the Venezuelan legal system encompasses the gathering of evidence, elements of conviction, means of proof, and proof of crimes, extending to cross-border offenses. The system also establishes rules regarding cooperation and judicial assistance, notably in extradition matters, with the incorporation of telematic means. This effectively contributes to the prevention and punishment of crimes, including customs and economic illegality at large—an essential aspect for fortifying the Maritime Silk Road and fostering international trade.

China and other nations with judicial representations here have a crucial strategic ally in the Americas, particularly in the judicial arena: the Bolivarian Republic of Venezuela.

International cooperation stands as a constant premise within the framework of our constitutional principles, emphasizing sovereignty, self-determination, legal security, and complementarity between peoples.



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