

**THE SETTLEMENT OF INTERNATIONAL COMMERCIAL DISPUTES:  
ALTERNATIVE DISPUTE RESOLUTION, COMMERCIAL COURTS, AND THE  
CONVERGENCE OF COMMERCIAL LAWS**

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**I. Introduction**

1. Thank you very much for the warm welcome and the very kind introduction. As Justice Hu has mentioned, this is my sixth visit to China; I am always delighted to come to China. Justice Hu has traced the close and warm friendship between Singapore and China, and between the Singapore Judicial College and the National Judges College. We can benefit our nations by faithfully upholding the rule of law, and today I want to suggest that we can promote an even wider benefit to other nations by adhering to this mission. We place great importance on the relationship between our countries and our courts. I have been enthusiastically looking forward to this visit. I am deeply grateful to the National Judges College for the wonderful arrangements made, including having arranged the wonderful weather, which makes this event even more memorable. I first visited this college some years ago, and it was at that time that this idea of my giving a lecture at this college was first discussed. On

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\* I am grateful to my law clerk, Sampson Lim, and my colleague, Assistant Registrar Elton Tan, who assisted me with the research for and preparation of this address.

that occasion, as Justice Hu mentioned, we planted a tree to symbolise our friendship. I am happy to hear that the tree is growing very well – this is a strong and enduring sign of our deep friendship. Following on from that invitation to deliver a lecture today, it really is a great honour for me to be here to address you today.

2. The National Judges College was founded in 1997 and, when it was formed, was entrusted with the important responsibility of providing judicial education and training for the judges of the People's Republic of China. In the years since then, the College has discharged that responsibility with distinction and played a critical role in developing a corps of professional judges to administer justice in China. More than two decades after its founding, while the core mission of the College remains unchanged, the world has changed dramatically in that time. These changes in the world have been driven by the twin forces of globalisation and technology, which have torn down barriers between countries and societies, transformed the face of commerce and business, revolutionised the ways in which we build and maintain our relationships, and in fact allow us to imagine a brave new world ahead of us. What does all of this mean for us as judges?

3. I think that to answer that question, it is helpful to recall China's own remarkable tale of economic transformation over that period of time. In the same year that the College was founded, Mr Renato Ruggiero, the Director-General

of the World Trade Organization (“WTO”), delivered a speech in Beijing in which he observed that negotiations regarding China’s entry into the WTO had reached an “important point”; and that the time had come to convert the momentum that had been built up over more than a decade of talks into tangible, lasting results.<sup>1</sup> Mr Ruggiero expressed confidence that the world would look back on China’s entry into the WTO as a “watershed in the evolution of the global economic system”; and, indeed, history has proven him right.

4. Since then, China’s modernisation has radically transformed the global economy. Just in the period between 2000 and 2017, Chinese imports as a share of global consumption more than tripled. And China today accounts for about 10% of global outbound foreign direct investment, up from just about 1% in 2000.<sup>2</sup> Within South-east Asia, China’s outward investment into ASEAN economies was practically non-existent a decade ago,<sup>3</sup> but it reached US\$150 billion in 2018 and is expected to more than triple to a staggering US\$500 billion by 2035.<sup>4</sup>

5. These metrics all reflect China’s emergence as a giant amongst national economies, and this, together with the increased interconnectedness of the world, has heralded a new era for the global economy. The thesis of my address today is that these are matters of immense importance to us as judges because the law is the handmaiden of commerce, and as commerce goes global, so must the law follow it. We can no longer afford to see the law and hence the profession

of judging as the exclusive preserve of domestic courts, and must instead embrace a vision in which we are the builders and architects of an international commercial dispute resolution framework that will form the strong foundation for the superstructure of global commerce, even as it continues to ascend new heights.

6. I will develop these points by first describing *what* I mean by “international commercial disputes” and *why* we should view these as a special category of disputes that merit unique treatment. I will then explain *how* we have developed particular methods to resolve such disputes before closing with some observations on *where* we should next set our sights.

## **II. “International commercial disputes”: A category *sui generis***

7. Let me begin by identifying three key features of an “international commercial dispute” to help us come to a common understanding of the subject.

(a) First, the *substance* of the dispute must be mercantile in nature. This depends on the underlying *relationship* between the parties out of which the dispute has arisen. And so, a dispute over the distribution of assets following the breakdown of marriage would not fall within our discussion because the underlying relationship there is marital, rather than commercial.

(b) Second, the *parties* to the dispute will typically be private and not state actors. Although I include international investment disputes between states and private enterprises within this category because of their increasing importance, this is not my focus today. Rather, my focus is on disputes between private actors, and not on disputes involving exclusively state actors that fall to be governed by principles of public international law, such as disputes over territorial sovereignty or those arising under the WTO framework for dispute settlement.

(c) The third feature is that the *reach* of the dispute must implicate at least two or more jurisdictions. This will usually be satisfied if, for example, the parties reside in two different jurisdictions, or if the substance of the transaction involves two or more jurisdictions.

8. I want to begin with the observation that disputes embodying all of these features are commonplace. A 2014 study of senior lawyers and executives by the international law firm, Hogan Lovells, revealed that cross-border disputes had become more prevalent and were expected to increase even further. The study also found that 90% of commercial disputes already involve two or more jurisdictions, with some involving as many as 50 jurisdictions!<sup>5</sup>

9. I am certain that the trajectory towards greater interconnectedness is both unmistakable and irreversible. A recent study has found that despite recent pushbacks against globalisation, global interconnectedness reached an all-time

high in 2017 because of increased “flows of trade, capital, information and people across national borders”.<sup>6</sup> And despite what might be seen as some contrary signs, there remains an enduring commitment of nations to maintaining a free and open global economy. This is borne out by their entry into important new economic partnerships such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, the European Union-Japan Economic Partnership Agreement which created the world’s largest open trade zone,<sup>7</sup> and the landmark trade agreement between Singapore and the European Union.<sup>8</sup>

10. This is important to us, because the rise of cross-border commerce means, as surely as night comes after day, that there will be an increase in cross-border commercial disputes. I suggest that there are two reasons why it is critical that we regard international commercial disputes as a special category of disputes.

11. First, by reason of their *international* nature, these disputes give rise to unique, complex and fundamental legal issues over whether a particular court should hear the dispute and how it should go about doing so.

12. For example, the parties may disagree over where the dispute should be decided. One party might be reluctant to submit to the home jurisdiction of the other party because of unfamiliarity, or because of a perception that there may be some form of “home-court bias” operating against it.<sup>9</sup> This is then compounded by disagreement over what the substantive law should be that

governs the dispute. Those sorts of issues can sometimes indirectly determine the outcome of the litigation, and for this reason, these issues are frequently fiercely contested by parties.<sup>10</sup>

13. Secondly, even after a party has emerged victorious from the fog and the fire, it may face yet another difficult obstacle – which is to enforce the judgment. A successful claimant will want to enforce the judgment in the jurisdiction where the defendant’s assets are located. However, the international enforcement of judgments has long rested, somewhat precariously, on a patchwork of reciprocal enforcement arrangements between particular states.<sup>11</sup> As a result, a successful claimant in these matters runs the risk that its judgment, however hard-won, may fall through the cracks and prove to be illusory.

14. In essence, what differentiates international commercial disputes from other disputes is not just that they engage at least two systems of law with differences in rules, procedures, and cultures, but that the interaction of these systems can throw up unique and difficult issues that domestic courts can sometimes struggle with. This is not good news for business, because businesses will react with greater caution to cross-border commercial opportunities if they perceive that there are going to be difficulties in enforcing their rights, and that in turn will threaten to impede the growth of national economies and global trade.

15. This leads me to the point that I want to make, which is that we, as

judges and lawyers, can make an important contribution to global trade by creating a robust and effective system of international commercial dispute resolution that supports and sustains the flows of trade and investment which are the lifeblood of the new global economy.

16. Let me illustrate this with reference to the vital role that the rule of law has played in Singapore's development. In 1963, Singapore shed its colonial past when it became a part of the Federation of Malaysia, but that was not to last. After two difficult years marred by racial riots and irremediable disagreements with the federal government in Kuala Lumpur, Singapore left the Federation and became fully independent on 9 August 1965. The circumstances in which we assumed independence were not auspicious. The foreign press proclaimed, in no uncertain terms, that we were doomed.<sup>12</sup> This was not a difficult forecast to make, since we were a tiny island – much smaller than Beijing – with no natural resources, no national defence force, inhabited by a people of different races and religions who seemed more different than they were similar. But out of this crucible of adversity we forged a city-state that is today one of the most successful economies in the world, and one that stands proudly alongside the leading financial centres of the world such as New York, London and Shanghai.

17. None of this would have been possible if we had not, more than half a century ago, committed ourselves to entrench the rule of law as one of the



fundamental values in our society.<sup>13</sup> Today, our clean and impartial judiciary is renowned for its quality and efficiency, our Government is celebrated for its zero-tolerance approach towards corruption, and our laws are promulgated, refined and strengthened by a vibrant and active legal community.<sup>14</sup> These conditions were part of the foundation of Singapore's economic prosperity. They provide the assurance of fair and equal treatment and the effective enforcement of rights and obligations. They have been pivotal in helping Singapore to attract foreign investments which, by 2010, had already exceeded S\$600 billion.<sup>15</sup> In 2017, Singapore was the fifth largest recipient of foreign direct investment inflows in the world.<sup>16</sup> Our Minister for Law once observed, that "[t]hat amount of money would not have come into Singapore unless people believed that their investments were safe",<sup>17</sup> and that in turn is a recognition of the importance of the rule of law. As our economy prospered, so too did the lives of our ordinary citizens, with remarkable growth in GDP per capita over that period of time.<sup>18</sup>

18. Singapore's remarkable journey is a testament to the foundational importance of the rule of law to economic success. I believe that we, as judges and lawyers, should think about how we can contribute to global prosperity. We should likewise think in terms of establishing the basic legal structures and conditions that will support the stable conduct of international trade. Our legal systems should facilitate, rather than fetter, the growth of the global economy. If this is the lesson to be drawn from Singapore's experience, it is even more emphatically the case here in China. The World Bank estimates that between

1990 and 2013, more than 700 million people were lifted out of poverty as China progressively opened up its economy to the world and supported that drive by strengthening its laws and legal system.<sup>19</sup>

19. In this context, it is unsurprising that China has turned its attention to the wider region and presented a vision to develop the *physical* infrastructure of the Belt and Road. Through a suite of mega construction projects across the vast sweep of the Belt and Road, China and its companies seek to plug the “infrastructure gap” that exists in many developing countries in our region.<sup>20</sup> The Belt and Road Initiative (“BRI”) promises to create millions of new jobs and improve living environments across Asia,<sup>21</sup> and therefore holds the promise of a better tomorrow for the communities that are straddled across the Belt and Road.

20. I suggest that the successful realisation of this grand vision to develop the *physical* infrastructure in this region will depend, to a large extent, on the development of a robust *legal* infrastructure to support it. In particular, the economic networks of the BRI must rest upon an effective transnational system for commercial dispute resolution. The infrastructure programme of the Belt and Road consists of 6 economic corridors,<sup>22</sup> more than 60 countries, and two-thirds of the world’s population.<sup>23</sup> The disputes that these projects will inevitably spawn will invariably be multijurisdictional in scope, technical in nature, and vast in terms of value and implications. It is critical that investors are assured of prompt

and effective redress for this particular *kind* of disputes. For the reasons that I have already outlined, I think that resort to the normal route of domestic litigation will be challenging, frustrating and ultimately futile. I think that we will fall short of the legitimate expectations of the international business community if we fail to deliver.

### **III. Modalities for settling international commercial disputes**

21. Let me begin by considering how the international legal community has thus far responded to the rise of international commercial disputes. That response has taken two principal forms – first, the development of alternative methods of dispute resolution; and second, the establishment of international commercial courts.

#### **A. *Alternative dispute resolution***

22. Alternative dispute resolution covers all methods of dispute resolution apart from court litigation, and in particular, includes arbitration and mediation. I will briefly comment on each of these.

23. International arbitration today is firmly established as the primary mode for settling international commercial disputes. In the 2018 Queen Mary University of London survey on international arbitration, 97% of respondents selected international arbitration as the preferred mode for settling such disputes.<sup>24</sup> There are various reasons for the popularity of international

arbitration but I will outline just four:

(a) First, the principle of party autonomy that underlies international arbitration. This has been hugely attractive for businesses. Parties are free to agree on matters such as the composition of the tribunal, the rules of evidence and procedure, and the seat of the arbitration. Unlike domestic litigation, parties can, to some degree, customise their dispute resolution procedure to fit their needs.

(b) Second, the widespread enforceability of arbitral awards.<sup>25</sup> This is underpinned by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which requires national courts to recognise and enforce arbitral awards, subject only to very narrow exceptions.<sup>26</sup> Today, with 159 contracting states, the Convention is a nearly universal framework for the enforcement of arbitral awards.

(c) Third, the UNCITRAL Model Law on International Commercial Arbitration has played a significant role in promoting the use of international arbitration.<sup>27</sup> It has harmonised the conduct of international arbitration by establishing fair and modern procedural rules and standards that are acceptable to diverse jurisdictions.<sup>28</sup> Since its adoption in 1985, legislation based on the Model Law has been promulgated in more than 80 countries and 111 jurisdictions.<sup>29</sup> Its widespread adoption has led in turn to the development of a rich body

of municipal court decisions on legislation based on the Model Law. This provides a valuable source of comparative guidance for courts interpreting the corresponding provisions in their own legislation, thus promoting the emergence of a “reasonably uniform international body of precedent” on the meaning and application of the Model Law.<sup>30</sup> This has helped to promote certainty and predictability in the arbitration process.

(d) Fourth, the growth of arbitration has been stimulated by arbitral institutions such as the Singapore International Arbitration Centre (“SIAC”) and the China International Economic and Trade Arbitration Commission (“CIETAC”). As arbitral institutions compete and adopt each other’s best practices,<sup>31</sup> new innovations in international arbitration practice spread quickly across jurisdictions and so benefit users everywhere. Let me give you an example: the widely-used emergency arbitration procedure. In the past, institutional arbitration rules did not permit parties to apply for emergency provisional relief until the arbitral tribunal had been established, and this could take weeks or months. When the procedure for emergency arbitration was first introduced, it proved to be overwhelmingly popular and today, virtually all leading arbitral institutions have incorporated some form of it into their rules.<sup>32</sup>

24. The common thread that runs through these four points is that of **convergence**. This contemplates the coming together of the international legal

community in a deliberate and intentional way to devise solutions to address common legal problems. In this way, the divergence of experience before different courts and tribunals is narrowed, and this in turn, promotes consistent, predictable, and fair outcomes.

25. I shall return to the theme of convergence later, but let me turn briefly to mediation. Mediation, and its philosophy of dispute *containment*, has quickly been gaining favour as an option of first resort before parties turn to arbitration or litigation for dispute *resolution*. In the 2018 Queen Mary University of London survey, almost 50% of respondents identified arbitration coupled with mediation as their preferred method of settling cross-border disputes, up from 34% in 2015; while the preference for standalone arbitration without mediation fell from 56% in 2015 to 48% in 2018.<sup>33</sup>

26. Why is mediation so popular? I suggest that there are three reasons for this.

(a) First, mediation allows parties to retain control over the outcome of settlement talks. They are free to reject any proposal they consider unacceptable. This may be contrasted with arbitration or litigation in which parties give up control of the outcome to the court or tribunal.

(b) Second, the mediation process gives parties the freedom to consider the broader horizon of their shared economic future. They can

look beyond the narrow confines of the particular dispute before them. By encouraging the parties to lift their eyes from their immediate disagreement, mediation promotes the preservation of long-term relationships.<sup>34</sup> This will be a particularly attractive feature to Asian businesses, which have a cultural preference for maintaining harmonious business relations with their partners.<sup>35</sup>

(c) Third, even if mediation does not lead to a complete settlement, it will usually help parties to narrow their differences and find common ground, so that what needs to be arbitrated or litigated is narrower than what they started off with.

27. One of the hurdles that has thus far stood in the way of the wider acceptance of mediation as a very effective way to resolve international commercial disputes has been the fear that mediated settlement agreements are harder to enforce internationally, especially when compared to arbitral awards.<sup>36</sup> In this regard, I congratulate China on its entry into the UN Convention on International Settlement Agreements Resulting from Mediation earlier this month in Singapore, together with 45 other countries. The Convention promotes the effective recognition and enforcement of mediated settlements in international commercial disputes. I believe that international commercial mediation will become even more influential as more states accede to the Convention in the coming years. Indeed, I believe that mediation will quickly

become the leading method of dispute resolution when relationships fray and fail.

**B. *International commercial courts***

28. I turn now to international commercial courts. In recent years, the dispute resolution scene has developed in such a way that the traditional distinction between court litigation and alternative dispute resolution has eroded. This has resulted partly because of the ongoing modernisation of courts and their processes, and partly because of the rise of international commercial courts that have sought to develop the best of all forms of dispute resolution for international commercial disputes.

29. The idea of a specialised court dealing with commercial disputes is not new. In 1895, the London Commercial Court was set up to deal with the needs of the business community in London. The court is an English court, situated within the English judicial system, and before which only members of the English Bar may appear,<sup>37</sup> but its caseload is distinctly international. This is partly because of the reputation of the English judiciary, partly because of the popularity of English law, and partly because of the importance of London as a global financial centre. Between January and July last year, 76% of the cases handled by the London Commercial Court were international in nature and 42% did not involve any English party at all.<sup>38</sup>

30. In recent years, several other countries – such as France, Germany, the



Netherlands, and Belgium – have established international commercial courts.<sup>39</sup> These courts target *only* international commercial disputes, and *not* domestic commercial disputes. Within Asia, we launched the Singapore International Commercial Court (“SICC”) in 2015. This was followed by the Abu Dhabi Global Market Courts in 2016, the Astana International Financial Centre Court, and the China International Commercial Courts (“CICCs”) in Shenzhen and Xi’an last year. These courts may all differ somewhat in structure and design, but they share a willingness to hear international commercial disputes that have no connection to the forum.

31. The rise of international commercial courts reflects the growing consensus that arbitration and domestic courts each have their unique challenges and do not always satisfy the wide-ranging needs of international commerce. High costs, the lack of effective sanctions for bad behaviour, and the lack of power to bring necessary and relevant third parties into the dispute have been identified as the three biggest problems with international arbitration.<sup>40</sup> I would add to this the growing concern that because there is no appellate mechanism in arbitration, there is no way to correct errors of law.

32. It is against this backdrop that international commercial courts have filled a gap in the market and offered users a separate option that is different in four significant ways from international arbitration:

(a) First, unlike the use of party-appointed arbitrators in international arbitration, international commercial courts appoint independently appointed judges to resolve disputes. This removes any concerns regarding the neutrality and independence of the decision-makers.

(b) Second, arbitral awards are generally not subject to appeal, and this means that fundamental errors made by the tribunal may be left uncorrected. That tends to undermine confidence in the ability of the process to achieve just outcomes.<sup>41</sup> In contrast, international commercial courts such as the SICC often offer parties at least a default right of appeal which they can opt out of should they so agree.<sup>42</sup>

(c) Third, unlike arbitration proceedings which usually take place behind closed doors, hearings in international commercial courts typically occur in open court,<sup>43</sup> and this acts as a check on the process by promoting accountability.

(d) Fourth, because arbitration is founded on the contractual consent of the parties, tribunals are not able to compel third parties who may be involved in the dispute in some way to become part of arbitration proceedings. Arbitration has therefore historically struggled to manage the multijurisdictional and multiparty disputes which so often arise from major joint ventures and partnerships.

33. What follows from this, is that international commercial courts do offer a

viable alternative to arbitration with some advantages in certain types of disputes. In combination, arbitration, mediation, and international commercial courts can provide parties with a suite of options that meet their varied dispute resolution needs.<sup>44</sup> This has been borne out by the experience in Singapore, where the SIAC has continued to grow from strength to strength even after the inception of the SICC. The SIAC currently receives about 400 cases a year on the average.<sup>45</sup>

#### **IV. The next frontier**

34. I now come to the last part of my lecture, in which I want to imagine the future of international commercial dispute resolution, and what this might hold for Singapore, China, and the rest of the world. Six years ago, I delivered a lecture in the United Kingdom in which I suggested that this future might be loosely scripted around three broad acts, with convergence as the central theme.<sup>46</sup> I want to revisit that script and vision, and see if events have played out as I had imagined six years ago.

35. In that lecture, I suggested that the opening act could be the harmonisation of domestic laws and processes on *recognition and enforcement* of judgments, given that this has “the most direct practical impact” for users of commercial litigation.<sup>47</sup> Since then, we have seen the introduction of the Hague Choice of Court<sup>48</sup> and Judgments Conventions<sup>49</sup> that establish transnational frameworks for the recognition and enforcement of foreign judgments. In the

same vein, the Singapore Convention on Mediation will facilitate the international enforcement of mediated settlements and, in so doing, boost the confidence of businesses in the finality and effectiveness of mediated outcomes.

36. Six years ago, I suggested that in the second act, we would see the convergence of our *dispute resolution processes*. I suggested that the most practical way of achieving this would be through “the creation of commercial courts with specialised rules of procedure which can be harmonised on a regional or even international level”. That, too, seems to be much closer at hand today. I have described the growing community of international commercial courts that have adapted domestic rules and procedures to meet the needs of international commercial disputes. In Singapore, the SICC is taking this a step further. It is in the process of developing a special customized set of procedural rules that aims to combine best practices in international arbitration with new and innovative solutions. These rules will streamline, simplify and expedite the conduct of proceedings in the SICC and drive forward the narrative of that second act.

37. Such convergence has also been driven by conscious international efforts to increase cross-court dialogue and collaboration. A prominent example is the Standing International Forum of Commercial Courts (“SIFoCC”), at which both China and Singapore participate. The SIFoCC draws together courts from almost 30 different countries to share best practices in the belief that courts

working together can make a stronger contribution to the rule of law than they can working alone.<sup>50</sup>

38. This brings me to the third and final act which I spoke of in my 2013 lecture. I suggest that we might regard that as the next frontier that confronts us. That involves the convergence of our *substantive laws*, driven by the recognition that the fragmentation of commercial laws across jurisdictions increases business risks and transaction costs, and in turn diminishes the appetite for cross-border trade. This heterogeneity of laws is a particular concern in Asia where the common and civil law traditions are fused with varied local customs and conventions. International commerce has viewed this diversity as cause for concern rather than celebration in this context.<sup>51</sup> According to an article in the Financial Times, the “hodge-podge” of laws in the region presents an uninviting picture to transnational businesses hoping to sink roots here.<sup>52</sup>

39. If we consider the goal of trying to achieve a meaningful degree of convergence, we must begin by seeking a clarity of vision and unity of purpose in shaping, out of our respective legal regimes, a coherent transnational system of law. Efforts at convergence *at that deeper level* will only be as productive, meaningful and enduring as the underlying relationship out of which they spring.

40. The annual Singapore-China Legal Judicial Roundtable is a perfect illustration of that type of unity of purpose and that type of relationship. Each

year since 2017, Chief Justice Zhou Qiang and I have co-chaired the annual Singapore-China Legal and Judicial Roundtables in Beijing and in Singapore. The third of these was concluded just yesterday. Each Roundtable has not just been an acknowledgment of the close and lasting ties between our two jurisdictions, but also an intensely practical forum at which best practices, new ideas, and opportunities for further collaboration are identified and explored.<sup>53</sup> The Roundtables have already led to the signing of important instruments such as Memoranda of Understanding on legal and judicial cooperation and on continuing judicial education, and a Memorandum of Guidance on the recognition and enforcement of money judgments in commercial cases.

41. At yesterday's Roundtable, we envisioned how the SICC and the CICC, as leading international courts in the Belt and Road, may together build an international commercial trial system that satisfies the unique demands of the BRI.

42. Apart from the Roundtable, Singapore and China have also deepened their relations at various levels. In recent times, our arbitral institutions have worked to develop new and innovative protocols;<sup>54</sup> our law firms have continued to learn from each other through attachments and study visits;<sup>55</sup> and our mediation institutions have partnered to establish a BRI Mediator Panel to promote the amicable settlement of disputes across the Belt and Road.<sup>56</sup>

43. These partnerships between the legal communities in Singapore and

China reflect not only a deep and enduring friendship but also a common understanding of how the law may be put to the service of international commerce. There is no better example of that deeper convergence in vision and philosophy that I spoke of earlier than the relationship that Singapore and China have enjoyed for so many years. To this end, let me suggest how we might drive the convergence of our substantive laws further forward.

44. In 2016 we established the Asian Business Law Institute, or ABLI, in Singapore. Among the first people I approached for support was Chief Justice Zhou Qiang, who has been a strong and generous supporter of the work of the ABLI since its inception. Steered by a multinational board of governors that includes among others, Justices Zhang Yongjian, Gao Xiaoli and Shen Hongyu, the goal of the ABLI is to provide “practical guidance in the field of Asian legal development” and “the convergence of Asian business laws”.<sup>57</sup>

45. The ABLI is still in its infancy but it has already made significant progress in several of its projects, the most advanced of which concerns the recognition and enforcement of foreign judgments in Asia. The first phase of its work in this regard has already been published, and the second phase will be published soon. When that is done, we can look forward to the publication of a set of Asian Principles for the Recognition and Enforcement of Foreign Judgments, which will undoubtedly prove immensely useful to the commercial community and influential in steering our jurisdictions toward common approaches in this

fundamental area of legal practice.

46. Increased judicial dialogue and collaboration is another essential step toward convergence of substantive laws. Our annual Roundtable and SIFoCC offer judges and courts an opportunity to deepen relationships, build consensus, and learn from each other. By way of an example, at the Roundtable yesterday, we had a fruitful discussion to understand and then consider how our respective jurisdictions may further collaborate in relation to the area of cross-border insolvency.

47. The growing network of international commercial courts provides us with yet another opportunity to push the boundaries of convergence. The reasoned judgments published by international commercial courts bind within their own jurisdictions and will often be consulted in other jurisdictions. In this way, we could witness the gradual accretion of a coherent body of transnational commercial law that businesses everywhere can trust and rely upon.<sup>58</sup>

48. A final suggestion that I have to drive forward legal convergence is the creation of standard form contracts that can be used to promote convergence in our region. For example, since 1957, the International Federation of Consulting Engineers (or “FIDIC”) has promulgated a suite of standard form contracts for construction projects. Today, FIDIC contracts are widely used for international engineering and construction projects<sup>59</sup> and preferred by major international development banks.<sup>60</sup> The key benefit to the sustained, industry-



wide use of these standard forms is that they ultimately promote a common understanding and interpretation of the allocation of the risks and the terms that they contain.<sup>61</sup>

49. The FIDIC forms trace their origins to 1957, at a time where the FIDIC itself was made up primarily of Western engineers. We can take an important step in this direction by developing a suite of standard forms that promotes the conditions, needs and requirements of Asian businesses, or more generally of jurisdictions in the Belt and Road.

50. The story of convergence that weaves together the three acts that I spoke of in my 2013 lecture is without a clear end, just as the pursuit of ever closer, ever stronger relationships between our courts and our countries is an endeavour without end. And this is rightly so, because these are tasks that deserve our sustained attention given that the goals that drive them are so worthwhile. As we persist in these efforts, the story of convergence – legal, social and economic – might well become the narrative of the BRI, unfolding a new chapter of progress for the world and shaping the history of the 21<sup>st</sup> century.

## **V. Conclusion**

51. I conclude my address by returning to the words of Mr Renato Ruggiero, who spoke here more than two decades ago. He said that “deepening interdependence” had become our “central reality” and that “managing

interdependence” was to be our “shared responsibility”.<sup>62</sup> He made these remarks with the aim of galvanising China to join the WTO and so move the world a step closer towards a multilateral trading system. That has since come to pass; but Mr Ruggiero’s reminder that interdependence is a companion of globalisation remains true even today, as we survey a world that has become much more complex, much more challenging and much more uncertain than it was two decades ago.

52. That same “shared responsibility” continues to bind us as we strive to manage today’s interdependence. No jurisdiction working alone can enact or create the legal architecture that can bear the weighty expectations of transnational commerce as it continues to expand. That is our common enterprise and the collective responsibility of the international legal community, and it is one upon which the economic and social well-being of millions of people indirectly depends. I hope that our respective communities of judges will see this as our mission and our calling, and work together to realise that vision.

53. Thank you all very much.

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<sup>1</sup> See the full text of the speech delivered by then WTO Director-General, Renato Ruggiero, “China and the World Trading System” (21 April 1997), accessible at [https://www.wto.org/english/news\\_e/sprr\\_e/china\\_e.htm](https://www.wto.org/english/news_e/sprr_e/china_e.htm).

<sup>2</sup> See the article by McKinsey Global Institute, “China and the world: Inside a changing economic relationship” (December 2018), accessible at <https://www.mckinsey.com/featured-insights/asia-pacific/china-and-the-world-inside-a-changing-economic-relationship>.

<sup>3</sup> See the Business Times article, “Deeper integration boosts prospects for China, Asean” (26 October 2018), accessible at <https://www.businesstimes.com.sg/opinion/deeper-integration-boosts-prospects-for-china-asean>.

<sup>4</sup> South China Morning Post, “Trade war will drive Chinese investment in Asean to US\$500 billion by 2035, think tank says” (25 October 2018): <[scmp.com/economy/global-economy/article/2170205/trade-war-will-drive-chinese-investment-asean-us500-billion](http://scmp.com/economy/global-economy/article/2170205/trade-war-will-drive-chinese-investment-asean-us500-billion)>.

<sup>5</sup> See Hogan Lovells report, “Global Currents: Trends in Complex Cross-Border Disputes” (2014) at p 4, available at <http://www.hoganlovells.com/globalcurrents/>.

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<sup>9</sup> See Gary Born, *International Commercial Arbitration* vol 1 (Kluwer Law International, 2<sup>nd</sup> Ed, 2014) at p 74.

<sup>10</sup> See the speech delivered by Justice Steven Chong at the British Maritime Law Association Dinner, “The Singapore International Commercial Court: A New Opening in a Forked Path” (21 October 2015) at para 14, accessible at [https://www.supremecourt.gov.sg/Data/Editor/Documents/J%20Steven%20Chong%20Speeches/The%20SICC%20-%20A%20New%20Opening%20in%20a%20Forked%20Parth%20-%20London%20\(21.10.15\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/J%20Steven%20Chong%20Speeches/The%20SICC%20-%20A%20New%20Opening%20in%20a%20Forked%20Parth%20-%20London%20(21.10.15).pdf).

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<sup>12</sup> Lee Kuan Yew, *From Third World to First: The Singapore Story – 1965-2000* (Singapore Press Holdings and Marshall Cavendish Editions, e-book edition 2014) at chapter 1 pp 1–2.

<sup>13</sup> See, generally, the Singapore Public Service Division website on “Upholding the Rule of Law” for a historical discussion of the rule of law in Singapore, accessible at <https://www.psd.gov.sg/heartofpublicservice/our-institutions/upholding-the-rule-of-law/>.

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<sup>15</sup> K Shanmugam, “The Rule of Law in Singapore” [2012] Sing JLS 357 at 358.

<sup>16</sup> Santander, TradePortal, “Singapore: Foreign Investment”: <[en.portal.santandertrade.com/establish-overseas/singapore/foreign-investment](http://en.portal.santandertrade.com/establish-overseas/singapore/foreign-investment)>.

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<sup>18</sup> K Shanmugam, “The Rule of Law in Singapore” [2012] Sing JLS 357 at 358.

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<sup>44</sup> See the speech deliver by Justice Steven Chong at the British Maritime Law Association Dinner, “The Singapore International Commercial Court: A New Opening in a Forked Path” (21 October 2015) at para 32, accessible at [https://www.supremecourt.gov.sg/Data/Editor/Documents/J%20Steven%20Chong%20Speeches/The%20SICC%20-%20A%20New%20Opening%20in%20a%20Forked%20Parth%20-%20London%20\(21.10.15\).pdf](https://www.supremecourt.gov.sg/Data/Editor/Documents/J%20Steven%20Chong%20Speeches/The%20SICC%20-%20A%20New%20Opening%20in%20a%20Forked%20Parth%20-%20London%20(21.10.15).pdf).

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<sup>48</sup> Convention of 30 June 2005 on Choice of Court Agreements: <[hcch.net/en/instruments/conventions/full-text/?cid=98](http://hcch.net/en/instruments/conventions/full-text/?cid=98)>.

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