

Speech by Ms Teresa Cheng, SC
Secretary for Justice
**“The Belt and Road Initiative and International Dispute
Settlement” panel session**
at the Forum on the Belt and Road Legal Cooperation
2 July 2018 (Monday)

Excellencies, ladies and gentlemen,

It is a great honour and privilege for me to be here sharing with you some of the important items that we, in Hong Kong, have considered about dispute resolution in the context of the Belt and Road Initiative.

First of all, I would like to thank the organisers, the Ministry of Foreign Affairs and the China Law Society, for inviting me to give the speech, and also importantly, for agreeing to the Department of Justice of the Hong Kong Special Administrative Region of China being one of the supporting organisations. It is

a great pleasure to participate in this very important initiative to look at legal cooperation in the context of the Belt and Road Initiative. I am also very pleased to participate in the very first forum and would like to see the continuation of such forum in the future.

Having just heard Judge Zhang (Chief Judge of the Supreme People's Court's No 4 Civil Division, Judge Zhang Yongjian) who explained to you about the setting up of the China international commercial court, I am going to ask all of us to think about the essential ingredients for a sustainable dispute resolution centre for Belt and Road Initiative disputes - sustainable for the implementation of the Belt and Road Initiative projects that will meet the standard of international rule of law, transparency and providing a fair, efficient and impartial result for disputes.

In analysing this, I would like to approach it in two stages. First, by looking at the main features of the Belt and Road

Initiative, and from there to build the main qualities that may be necessary for such dispute resolution mechanism and centre.

First, let's look at the main themes of the Belt and Road Initiative. We have heard a lot from our distinguished speakers this morning and earlier this afternoon about the main ideas and themes. I would like to, without repeating everything, summarise by reminding ourselves of the three collaborations and the five connectivities that are being highlighted by a number of our speakers. Partnership and sharing is really the main theme of the Belt and Road Initiative. China is the initiator, but the benefits are being shared by all the participating states, as well as the people in those states.

People connectivity is particularly important, as it marks the difference between a mere economic investment and the idea of the Belt and Road Initiative projects that have been discussed. As the United Nations Secretary-General, Mr António Guterres, said in the 2017 Belt and Road Initiative Forum in Beijing, one

of the overarching objectives between the Belt and Road Initiative and the 2030 Agenda is the idea of sustainable development. The Belt and Road Initiative, he said, created opportunities, making of global public good and creating win-win cooperation, and if I may add, among states, investors as well as people in the Belt and Road Initiative countries.

The second matter we must look at is how to characterise the Belt and Road Initiative. Is it a mere national policy, or is it regional or international? I would venture to suggest that it is international but with special features unique to participating states. Hence, there is a very important element of national as well as regional particularity in the Belt and Road Initiative. As Dr Surakiart Sathirathai said this morning, it is a new globalism. As stated by Under-Secretary-General of the United Nations, Mr Liu Zhenmin, it is a transgression from bilateral arrangements to multilateral and later on, plurilateral arrangements. In a way, the Belt and Road Initiative provides a very good opportunity for states that have not been able to participate in the formulation

and evolution of principles of international law to take part in the further development of international law for the harmonisation and peace for the world as a whole.

With these qualities and attributes of the Belt and Road Initiative in mind, I would like to go on and look at some of the essential foundation for a sustainable dispute resolution centre, and appropriate dispute resolution mechanisms. In so doing, one has to bear in mind that there are various types of disputes - business to business, business to government and government to government, and hence a number of different types of entities involved. There are also different sizes of disputes and therefore, the appropriate mechanism to be adopted becomes an important feature to be borne in mind.

If I am trying to encapsulate the idea by putting it into one sentence, I would like to suggest that a sustainable Belt and Road Initiative dispute resolution centre should be established through collaboration, based on credibility and sensitive to

cultural diversity. And therefore, three words: collaboration, credibility and culture.

Collaboration first. It is easy to understand that collaboration is important because it is something that will allow investor states, host states, as well as the investors themselves as parties to the Belt and Road Initiative projects to collaborate and participate in the project and to be involved in the formation of the dispute resolution centre. So whether it should be a new body, or it should be a modification of an existing one, the answer is relatively straight forward. In order for a body to be set up, it must be formulated and participated by all these participants in these projects.

The next question is looking at how to collaborate - should it be a treaty based body, or should it be merely another NGO that is set up like in many other places. There are a lot that have to be considered, whilst bearing in mind that G2G disputes are probably better dealt with by a treaty based type of dispute

resolution centre.

The second essential ingredient is credibility. In terms of credibility, one has to look at it by bearing in mind that it takes a long time to build up credibility and trust on any particular body or particular place.

In terms of credibility, I like to propose two ideas. One is to look at neutrality, and the other is whether a particular place is a free and open market.

Neutrality first. Is neutrality merely by looking at another venue or a third place? I would suggest not. If one is to analyse neutrality, it really boils down to three matters again. First, the neutrality of the third party - neutral, that is the arbitral tribunal or the mediators. The second is the neutrality of the rules - the law that is being applicable in a relevant place. The third is the neutrality of the supervising body that is overseeing the credibility of the process itself. Those three are important

elements of neutrality, not where the venue physically or nationally is located.

The second element to credibility is free and open market. For people to have trust in a particular place, one should not undermine the importance of free flow of people, capital, goods and information, the four freedoms that we all hear about a lot recently on BREXIT.

The third essential ingredient I would like to share with you is culture. Not just social culture, but legal culture. It is important to bear in mind the civil law as well as common law system. The nature and the ability of the particular body to master and understand the two types of legal system is extremely important. Hong Kong, under the “one country, two systems”, within China which is a civil law country, practises common law and has the final adjudication power within Hong Kong.

The innovation of dispute resolution mechanism also emanates from diverse social culture. The Asian culture is a lot more harmonious in nature than that of the more adversarial type Western culture when disputes are being dealt with. How does one merge the two types of cultures and devise a particularly useful form of dispute resolution mechanism will be a very important consideration.

The one word to note is mediation. Hong Kong has been successfully practising mediation, and also promulgating investment mediation with a view to adopting and implementing that when disputes arise under the CEPA Investment Agreement concluded between Hong Kong and the Mainland. Training in investment mediation also started this year.

Thank you very much.