

**Script of Presentation<sup>1</sup> by the Hon Mr. Rimsky Yuen SC  
Secretary for Justice of the Hong Kong SAR  
at the 5<sup>th</sup> Asia Pacific ADR Conference (Session 1)  
on 12 October 2016 (Wednesday)**

***“The Belt and Road Initiative: Impact on  
the Future of Dispute Resolution”***

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Mr. Riberio [Head, UNCITRAL Regional Centre for Asia and the Pacific], Professor Shin [Chairman, SIDRC], Distinguished Guests, Ladies and Gentlemen,

1. First of all, may I thank the organizers of this ADR Conference, namely, the UNCITRAL Regional Centre for Asia and the Pacific, the Ministry of Justice of the Republic of Korea, the Korean Commercial Arbitration Board, the International Chamber of Commerce and the Seoul International Dispute Resolution Centre, for giving me this opportunity to address such a distinguished audience.
2. The theme chosen for this session, “*Arbitration for 50 Years and 50 Years Ahead – Innovation for Efficiency and Legitimacy*”, is, if I may say, a very well chosen topic. We all know that arbitration has a long history. But in the past 50 years, we have definitely seen significant, if not dramatic, changes in the international arbitration landscape. No doubt, one of the key factors for such changes is the contributions made by the UNCITRAL, which was established pursuant to the resolution passed by the United Nations General Assembly 50 years ago in 1966. As this year marks the 50<sup>th</sup> birthday of the UNCITRAL, it is naturally a good time for us to reflect on the past, as well as to look forward and prepare ourselves for the challenges ahead.

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<sup>1</sup> This is the script based on which the Secretary for Justice did his presentation at the conference, but not a verbatim record of the oral presentation.

3. The topic of my presentation today is “*The Belt and Road Initiative: Impact on the Future of Dispute Resolution*”. This topic is a big topic, since it is widely accepted that the Belt and Road Initiative (“Initiative”) is likely to have far-reaching effects in many aspects. In the limited time available, I will seek to outline the key features of the Initiative, and highlight a few points concerning its possible impact on the future of dispute resolution.

### **The Belt and Road Initiative**

4. The Initiative refers to the “Silk Road Economic Belt” and the “21<sup>st</sup> Century Maritime Silk Road”<sup>2</sup>. It was first announced by President Xi of the People’s Republic of China (“PRC”) in late 2013, and aims to connect Asia, Europe and Africa along five main routes.
5. The Silk Road Economic Belt focuses on: (1) linking China to Europe through Central Asia and Russia; (2) connecting China with the Middle East through Central Asia; and (3) bringing together China and Southeast Asia, South Asia and the Indian Ocean. The 21<sup>st</sup> Century Maritime Silk Road, on the other hand, focuses on using Chinese coastal ports to: (4) link China with Europe through the South China Sea and the Indian Ocean; and (5) connect China with the South Pacific Ocean through the South China Sea. On the whole, the Initiative covers over 60 countries with a total population of about 4.4 billion (i.e. accounting for about 63% of the world total), as well as an aggregate GDP of over US\$20 trillion (which is about 30% of the global GDP).
6. In March 2015, the PRC’s National Development and Reform Commission, together with the Ministry of Foreign Affairs and the Ministry of Commerce published a document setting out the vision and action plan of the Initiative (“Action Plan”).

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<sup>2</sup> For a convenient summary and introduction, references can be made to: (a) the Belt and Road portal of the Hong Kong Trade Development Council; and (b) the website of the State Council of the PRC.

7. According to the Action Plan, the “Initiative is open for cooperation. It covers, but is not limited to, the area of the ancient Silk Road. It is open to all countries, and international and regional organizations for engagement, so that the results of the concerted efforts will benefit wider areas”. The Action Plan also points out that the “development of the Belt and Road should mainly be conducted through policy communication and objectives coordination. It is a pluralistic and open process of cooperation which can be highly flexible, and does not seek conformity.” This, if I may stress, is one of the key unique features of the Initiative. Unlike the conventional arrangement adopted for international or regional economic cooperation, there is no over-arching agreement or convention for the parties to sign before they can join in the Initiative; nor is the number of countries fixed to those who have signed any specific documents or investment treaties.
  
8. The key objective of the Initiative is to improve economic connections throughout the relevant continental and maritime regions. The areas of co-operation envisaged under the Initiative include: (1) policy coordination, which involves (among others) the promotion of intergovernmental cooperation, the building of a multilevel intergovernmental macro policy exchange and communication mechanism; (2) facilities connectivity, which focuses on the improvement of the connectivity of infrastructure construction and the formation of an infrastructure network connecting all sub-regions in Asia, and between Asia, Europe and Africa; (3) unimpeded trade, which involves the improvement of investment and trade facilitation, and the removal of investment and trade barriers for the creation of sound business environment within the region and in all related countries; (4) financial integration, which is an important underpinning of the Initiative and which involves (among others) the establishment of the Asian Infrastructure Investment Bank and the strengthening of financial cooperation through the signing of MOUs on cooperation in bilateral financial regulations

and beyond; (5) people-to-people bonds, which involves the promotion of cultural, academic and personnel exchanges for the purpose of enhancing support for the Initiative.

9. The Initiative, once announced, has attracted much attentions and interests from around the world. Some focus on the Initiative's possible impact on the future global economy, others consider its implication on geopolitics and also its interaction with other regional economic partnerships including the Trans-Pacific Partnership ("TPP") and the Transatlantic Trade and Investment Partnership ("TTIP"). The views expressed in such discussions are naturally divergent, but one common feature that stands out is the positive impact of the Initiative on cross-border trade and investment. In short, the overall consensus is that the Initiative is likely to bring about huge opportunities in trade and investment, which in turn will offer opportunities for professional services including legal services as well as dispute resolution services.

### **The Initiative and Dispute Resolution Services**

10. The relationship between the Initiative and the future of dispute resolution is an interactive one. It is a two-way, instead of a one-way, relationship. For the present purpose, perhaps it is pertinent to focus on the following points.
11. First, given the likely increase of commercial and investment activities, the demand for dispute resolution services including arbitration is bound to increase. As noted earlier, one of the key areas of the Initiative is infrastructure connectivity. Indeed, it has been projected that Asia alone need about \$8 trillion worth of basic infrastructural projects for the 2010-2120 period<sup>3</sup>. In the circumstances, the first few areas that are likely to feel the positive impact includes dispute arising from infrastructure projects and related matters. Needless to say, disputes concerning the logistics and maritime sectors are also likely to be amongst

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<sup>3</sup> See: "How Malaysia scholar sees the Belt and Road Initiative" (collected in website of the PRC's State Council)

the first category of professionals who will feel the positive impact of the Initiative.

12. In the past few years, many people have suggested that arbitration is heading towards a golden age in Asia. For instance, in the July issue of *Asian Legal Business* of this year, the editor wrote as follows (at p. 2): “*There is a good chance that sometime in the future, the legal industry in Asia will look back at this period and realize that it was time when arbitration truly come into its own in the region.*” In my view, the Initiative has become and will remain for a considerable period of time a strong impetus for the further development and popularity of international arbitration.
13. Second, from the policy perspective, a question arises from the implementation of the Initiative is the future development of the international arbitration regime.
14. On the one hand, there are more and more people calling for harmonization of international arbitration law. For instance, Liu Jinxin, regional logistics expert and chief architect of the Bangladesh-China-India-Myanmar Corridor, cited the need for such harmonization in April last year<sup>4</sup>. Similarly, Ong Ka Ting, who is Malaysian Prime Minister’s special envoy to China and also the chairman of the Malaysia-China Business Council, raised essentially the same question at a meeting held in Beijing last month<sup>5</sup>.
15. Indeed, just yesterday in Hong Kong, the International Academy of the Belt and Road released the *Blue Book on the Dispute Resolution Mechanism for the Belt and Road*. The Blue Book, which is the joint efforts of a panel of academics and experts on dispute resolution, puts forward a proposed uniform dispute

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<sup>4</sup> “Who’s afraid of China’s One Belt One Road Initiative?” *East by Southeast* (24/4/2015) (<http://www.eastbysoutheast.com/whos-afraid-of-chinas-one-belt-one-road-initiative/>)

<sup>5</sup> “China, Malaysia Mull Dispute Resolution for ‘Belt and Road’ Countries”, *The Diplomat* (20/9/2016) (<http://thediplomat.com/2016/09/china-malaysia-mul-dispute-resolution-for-belt-and-road-countries/>)

resolution mechanism adopting the principle of mediation first and then followed by arbitration.

16. On the other hand, there are suggestions that the better approach is to adapt the current international arbitration regime, including in particular the UNCITRAL Model Law and the New York Convention, to the specific needs arising from the Initiative. If this approach is to be adopted, the next question that arises is how should the current regime be (if at all) revised to take into account the diversities that exist among the countries along the Belt and Road route. Such diversities are indeed huge. Not only are is the number of countries involved significant (i.e. over 60 countries, as noted above), the countries covered by the Belt and Road route have very different legal system, legal culture and are at very different stage of development in terms of using arbitration as a means of dispute resolution. Nevertheless, since the ultimate goal of arbitration (and indeed any dispute resolution) is to resolve disputes in a fair, just and effective manner, there seems to be no reason why international arbitration cannot be used as a common denominator among the countries along the Belt and Road route.
17. From a relatively more macro perspective, the question of whether there should be harmonization of arbitration law is only one facet of the bigger question of how an international legal order (or at least an international arbitral legal order<sup>6</sup>) should be constructed to support the Initiative. As researches reveal (and which I believe is not controversial), effective dispute resolution is essential for promoting trade and commerce (whether in the domestic context or at the international level). The PRC and the Central People's Government thereof, are of course fully aware of the importance of dispute resolution.
18. In July 2015, the Supreme People's Court ("SPC") promulgated

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<sup>6</sup> As noted in Emmanuel Gaillard, *Legal Theory of International Arbitration* (Martinus Nijhoff Publishers) (2010) (at p. 35), one school of thought is that the juridicity of arbitration is rooted in a distinct, transnational legal order that can be labeled as the "arbitral legal order".

an Opinion<sup>7</sup> (the “Opinion”) dealing with, among others, dispute resolution in the context of the Initiative.

19. In the Opinion, the SPC indicated strong support towards the use of international commercial and maritime arbitration for resolving cross-border disputes arising from the Belt and Road Initiative. Specifically, it was pointed out that foreign arbitral awards relating to the Belt and Road Initiative should be promptly recognized and enforced in accordance with the law. In addition, the SPC indicated that the People’s Courts should aptly apply international treaties and practice, and seek to verify and apply foreign laws in dealing with cross-border cases in order to raise the credibility of judgments given by the courts. With a view to enhancing the efficiency in resolving legal disputes, the Opinion also stated that bilateral and multilateral mutual legal assistance should be promoted. In this connection, it is suggested that reciprocal recognition and enforcement of judgments among different jurisdictions along the Belt and Road should be encouraged.
20. In short, the Opinion represents the strong policy support given by the highest court in the PRC over the Initiative and also demonstrates the importance attached by the SPC to international arbitration as means of dispute resolution. Such support will provide further impetus to the development of international arbitration in the region and beyond. On the other hand, a robust dispute resolution regime will in turn enhance investors’ confidence, which is essential in taking forward the Initiative. This is why I said earlier that the relationship between the Initiative and dispute resolution are interactive and two-way.

### **Concluding Remarks**

21. The few points that I made just now are of course only some of the aspects concerning the Initiative that merit study and

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<sup>7</sup> 《關於人民法院為“一帶一路”建設提供司法服務和保障的若干意見》

consideration. Other aspects include training, capacity building, researches, collaboration among governments, and how best the international arbitration community can cooperate, both among themselves and with jurisdictions along the Belt and Road route, to enhance the sustainable development of international arbitration so as to meet the needs arising from the implementation of the Initiative.

22. On this note, if I may be allowed to conclude by highlighting this point: Hong Kong firmly supports the development of international arbitration and also takes a keen interest in the implementation of the Initiative. In this regard, apart from the support expressed by the Central People's Government ("CPG") in the "Hong Kong-Macao Chapter" of the 13<sup>th</sup> National Five-Year Plan for Hong Kong to consolidate its position as an international arbitration centre, CPG has pointed out on numerous occasions that Hong Kong has a role to play in the implementation of the Initiative. Hong Kong therefore very much welcomes opportunities to cooperate with the international arbitration community and we look forward to having other chances to exchange views with you on the Initiative and its impact on dispute resolution.
23. It remains for me to wish this conference a great success, and also to wish you a nice stay in Seoul.

Thank you.