

A Study on the Building of an Online Arbitration Mechanism for Settling Trade Disputes Along the Belt and Road

Ni Nan*

Abstract: As trade disputes along the Belt and Road keep increasing, how to properly address these disputes has become a focus in the Chinese legal community. At present, when it comes to the settlement of trade disputes along the Belt and Road, both traditional litigation and arbitration are faced with many legal and realistic challenges brought about by the complicated situations along the Belt and Road. Given this, building an online arbitration mechanism for settling trade disputes along the Belt and Road in the context of the Internet economy has been proposed. Traditional litigation is faced with a range of laws from different states, as well as the impact of huge differences in the national political systems, economic strengths and legal cultures regarding specific cases. An online arbitration mechanism may be capable of effectively mitigating the laws of the various states and the impact of the differences between them. Additionally, applying “virtual space” to arbitration is in line with the Internet economy’s intrinsic need for higher speed and efficiency. Building an online arbitration mechanism for settling trade disputes along the Belt and Road is also a crucial manifestation of diversifying dispute settlement mechanisms.

Keywords: the Belt and Road Initiative; online arbitration; center for dispute settlement

* Ni Nan, Associate professor, the School of Economic Law, Northwest University of Politics & Law.

* Foundation item: This paper is a staged research result of “Studies on the Online ADR Mechanism Targeting Trade Disputes along the Belt and Road” [2016KJXX-38]—a program funded by the 2016 Shaanxi Young Tech-talents Foundation; “Special Studies on the China (Shaanxi) Pilot Free Trade Zone 2016” [SRZ2016203]—a program launched by the Silk Road Area Cooperation and Development Law Institute; and “Studies on the Legal Assessment Evaluation and Grading in the Context of the Belt and Road Initiative”, a sub-program of “Studies on the Legal Supply Mechanism in the Context of the Belt and Road Initiative” [16ZDA064], a major program of the 2016 National Social Sciences Fund.

It was four years between China's proposal of the Belt and Road Initiative, in September 2013, and the opening of the first Belt and Road Forum for International Cooperation (BRF) in May 2017. This period saw the formation and initial development of the Belt and Road Initiative, whose core purpose is to facilitate joint development, joint participation and connectivity among countries along the Belt and Road and eventually form a new landscape of common prosperity. At first, the Initiative gave priority to the economic, trade and social development of countries along the Belt and Road. Legal issues were beyond its focus in the early development stage. With the continuous increase of trade volume in the Belt and Road community, however, many more commercial subjects have participated in the advancement of the Belt and Road Initiative, giving rise to a year-on-year increase in trade disputes. Currently such trade disputes mainly originate from commercial exchanges between Chinese and foreign enterprises. Between 2013 and 2016, China's exports (state-owned and privately-run enterprises) to countries along the Belt and Road increased by 2%, while its imports from these countries dropped by 2.2%.^① The sustained growth of such exports should primarily be attributed to the participation of more privately-run enterprises. The exports of privately-run Chinese enterprises to countries along the Belt and Road increased by 4.5% from 2013 to 2016, while the figure for state-owned Chinese enterprises dropped by 1.7%. It is precisely due to the active participation of commercial subjects from relevant countries and regions in the advancement of the Belt and Road Initiative that corresponding trade disputes have been on the rise since 2015. It is noteworthy that in 2016 China's total volume of export-import with countries along the

Belt and Road reached RMB 8.67 trillion and its total investments in these countries exceeded USD 50 billion. With the further advancement of the Belt and Road Initiative, China's relevant trade volume is sure to witness a leapfrog growth, which will inevitably incur more trade disputes. That explains why it is now of exceptional importance for China to explore a legal safeguard mechanism for the Belt and Road Initiative. Only by establishing a sound and complete legal mechanism and a benign legal environment can China effectively engage with more countries along the Belt and Road. According to the contending parties of different disputes, trade disputes fall into three categories: Disputes between states, disputes between states and civilian(s), and disputes between civilians from different states. Of all countries along the Belt and Road, most are developing countries. So far, China has signed cooperation agreements with over 40 related countries and international organizations. In fact, consultation, mediation, conciliation, intervention and arbitration have been clearly identified as the means of dispute settlement both in the China-ASEAN Treaty of Good-neighborliness, Friendship and Cooperation proposed in 2013 and the Belt and Road cooperation agreement signed with New Zealand, China's first Western partner under the Belt and Road framework, in March 2017. This is expected to effectively alleviate trade frictions with relevant countries and at the same time prevent existing disputes from escalating. Among the trade disputes within the Belt and Road community, those between civilians from different states are the most highlighted. Currently, the settlement of this type of dispute mainly relies on two approaches: Litigation and arbitration. However, litigation is accompanied with a variety of legislative risks as well as

① ASKCI Consulting. An analysis of the overall landscape of trade cooperation between China and countries along the Belt and Road. Retrieved from: <http://www.askci.com/news/finance/20170324/17063994178.shtml>.

complicated real problems. At present, six government systems (presidential government, parliamentary republic, monarchy, constitutional monarchy, people's congress, and presidium) are adopted by countries along the Belt and Road.^① There are 61 countries adopting a multi-party system, and three countries (Laos, Vietnam and Turkmenistan) adopting a single-party system. Political party activities are prohibited in Gulf monarchies such as Saudi Arabia, UAE, Oman, Kuwait, Qatar and Bahrain. Over the past decade, 22 countries have experienced at least one large-scale political conflict or turmoil and eight countries have been trapped in long-term chaos caused by wars and physical conflicts. In terms of legal systems, 49 countries have civil law systems, 11 have common law systems; and four use Islamic law. Even for the 49 countries adopting a civil law system, their commercial laws and corporate laws differ from one to another. Such complicated political, economic and legal situations make it difficult to settle disputes through a domestic litigation approach. Besides, judging from the two batches of the Belt and Road-related typical cases released by the Supreme People's Court of the PRC, problems concerning the following aspects are highlighted: choice of applicable laws based on conflict rules, identification and ascertainment of foreign laws, application of international conventions and practices, reservation of public order, etc. The addressing of these

problems directly concerns the plaintiff's chance of recovering. Even in the event of recovery, the plaintiff still has to strive for the recognition and execution of foreign commercial rulings, which is bound to consume both time and energy. Due to the variety of realistic and legal issues facing the litigation approach to the settlement of cross-border trade disputes, most commercial subjects prefer arbitration for settling trade disputes. Compared with litigation, arbitration is naturally more flexible and convenient. In addition, of all the countries along the Belt and Road, except Iraq, Yemen, Maldives and Turkmenistan, the remaining 61 are contracting parties of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*.^② This very fact also contributes to people's preference for the arbitration approach to dispute settlement. For previous commercial disputes between Chinese and foreign enterprises, 90% have undergone arbitration proceedings by an international arbitration institution, and over 90% of the Chinese enterprises lost.^③ This does not mean foreign trade-related arbitration is not fair. Yet, it is not hard to see that many world-renowned arbitration institutions (ICC, AAA, LCIA, ICSID, SCC, etc.) adopt rules and procedures favorable for relevant developed economies in Europe and North America to reflect their global influence. These rules and procedures are based on the *New Law Merchant*, which is

① Countries along the Belt and Road feature six government systems (i.e. presidential government, parliamentary republic, monarchy, constitutional monarchy, people's congress, and presidium). More specifically, the system of presidential government is adopted by 29 countries, most of which are post-Soviet states in Central Asia and the Middle East. Parliamentary republics are adopted by 25 countries, most of which are located in South Asia and Central Europe (Turkey is in transition from parliamentary republic to presidential government). Constitutional monarchy is adopted by seven countries, which respectively are Thailand, Malaysia, Cambodia, Bhutan, Jordan, Bahrain and Spain in Southeast Asia, West Asia and other regions (after the constitutional reform in 2002, Bahrain has adopted a two-chamber system, with state power still in the hands of the royal family). Monarchy is adopted by six countries, including Brunei and five Gulf States (Saudi Arabia, UAE, Oman, Kuwait and Qatar). All of these six countries are Islamic states. China's two socialist neighbors, Laos and Vietnam, adopt the system of a people's congress. Bosnia and Herzegovina adopt presidium systems, jointly governed by the three peoples of Bosnia, Serbia and Croatia.

② The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, was adopted by a United Nations Conference of International Commercial Arbitration on June 10, 1958. 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.

③ He Jia. Leveraging the Belt and Road Initiative to raise China's voice in settling international commercial disputes. Retrieved from http://www.p5w.net/news/gncj/201609/t20160919_1586614.htm.

exercised primarily through “de-localized arbitration” (Lu, 2017). The establishment of such a legal order is a manifestation of European and North American politics, economies and cultures and is unfair to most developing countries along the Belt and Road. A legally guaranteed order is supposed to fit in with local politics, democracy, economic development and social progress (Watt, 2006). Only by doing so can such a legally guaranteed order maintain local market stability and advance local economic development. It is exactly for this reason that an online arbitration mechanism for settling trade disputes along the Belt and Road needs to be developed. This mechanism is a key part of the Belt and Road Initiative’s legal guarantee mechanism. The building of this online arbitration mechanism is by no means the direct application of a simplified online arbitration version. Rather, it refers to the formation of a series of arbitration rules and procedures which truly fit the political, economic, democratic and legal development of countries along the Belt and Road, and facilitate top-down design and improve the existing framework in accordance with general planning. The reason for this “online turn” mainly lies in the fact that the Belt and Road routes stretch across Eurasia and cover several countries. Under such circumstances, online arbitration can satisfy the needs for higher efficiency, speed and convenience in the era of the Internet economy and at the same time fully demonstrate its humanized setting and extensive application of Internet technology. Online arbitration can minimize the influence of the relevant parties’ economic strengths, political backgrounds and other factors on the verdict of a traditional legislative judgment. Online arbitration tends to be more objective and impartial. With sound and complete top-down

design and effective supervision, arbitration and procedural justice will be ensured and the legitimate rights and interests of contending parties will be safeguarded to the maximum extent possible. China is the largest developing country along the Belt and Road and the world’s second largest economy. The Belt and Road Initiative provides a crucial opportunity for China to transform from a regional power to a major player in the international arena. To effectively boost economic and trade exchanges with countries along the Belt and Road, China must improve its public goods and legal guarantee mechanisms. Given this, it is significant and imperative to explore the development of an online arbitration mechanism for settling trade disputes along the Belt and Road.

1. Historical evolution of online arbitration

Online arbitration, or cyber arbitration, refers to the application of ICT^① (Information, Communications and Technology) to the arbitration process and the transformation of arbitration from offline to online by means of Internet technology. More specifically, the contending parties confirm the pre-set online arbitration rules before officially going through the procedures of online arbitration. The contending parties and the arbitrator complete the whole process of evidence exchange, mediation, trial and ruling with the help of digital information processing devices, video conferencing systems and intelligent processing programs. This online arbitration is in nature an “online virtual trial.” Compared with traditional arbitration, online arbitration is more flexible and autonomous. Supported by Internet technology,

① ICT is the acronym of information and communication technology, which is another/extensional term for information technology (IT) and stresses the integration of information technology and communication technology.

online arbitration can save significant manpower, material resources and time for the contending parties. It is indeed a more effective approach to the settlement of commercial disputes in this era of the Internet and is now called “paper-free arbitration.” Online arbitration is not an isolated case, for it emerges as an important part of ODR^① (online dispute resolution) mechanisms. Enabled by Internet technology, ODR came into being in the USA in the 1990s and was quickly introduced to other major developed economies. It is an online approach to dispute settlement designed to make up for the defects of ADR^② (alternative dispute resolution) in collecting evidence, judging disputes, performing duties, and identifying contending parties in the face of the many online disputes. ODR usually consists of online arbitration, online mediation and online appeal. In 2000 the USA amended its *Uniform Arbitration 1955* and renamed it *UAA 2000*. This law, in a generalized representation, grants the power of arbitration, including online arbitration, to any neutral body. Article 30 of this law for the first time ever specified the application, validity, execution and consequences of both domestic and international electronic signatures. This move cleared the biggest legal hurdle for identifying the validity of contracts and exchanging evidence between the contending parties in online arbitration. In 2001 the American Arbitration Association (AAA) released the *Online Procedures and Supplemented Rules*, which was the world’s first norm of online arbitration. This document specifies requirements concerning the uploading of evidence for online arbitration and allows the contending parties to enter an appearance via audio or video conferencing systems. In addition,

there is also a provision of convertibility that allows face-to-face arbitration when required by either of the contending parties. In 1996 the UK amended the *1976 Arbitration Act*, updating its Article 52 (1) as “the parties are free to agree on the form of an award” and its Article 66 as “an award made by the tribunal pursuant to an arbitration agreement may, by leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect; where leave is so given, judgment may be entered in terms of the award” (Roberto Mangabeira Unger, 2005, pp. 64–82). Such provisions provide a basis for the practice and execution of online arbitration. The UK then introduced the *Electronic Communications Act 2000 (ECA 2000)*, which specifies electronic signature’s recognized standard and technical specifications and thus provides a technical norm for the promotion and application of online arbitration. In 1998 Germany introduced the Code of Civil Procedure. According to its Article 1031 in Chapter 10 “Arbitration Procedure,” arbitration agreement includes a variety of texts, including letter, telefax, telegram and recordable telecommunications. This made it possible for online arbitration to be practiced in Germany. In 2000 Subordinate Courts in Singapore began to offer online arbitration services (Joon Ha Jung, Byung Chul Jeon, Byeng D.Youn & Myungyon Kim, 2016). In 2001 the Tokyo Maritime Arbitration Commission of JSE (TOMAC) applied online arbitration to cases with an agreement between the contending parties (Zheng, 2013).

The world’s first online arbitration project was the Virtual Magistrate Project (VMP), which has its origins in a meeting sponsored by the USA-based National Center for Automated Information

① Online dispute resolution (ODR) is a branch of dispute resolution which uses technology to facilitate fair and just online resolution of disputes over e-commerce between enterprises and consumers.

② Alternative dispute resolution (ADR) originates from the USA’s new approach to dispute settlement and means “non-litigation procedures of dispute settlements.” It is a collective term for ways that parties can settle disputes with the help of a third party and it involves mediation, conciliation, mini-trial, rent-a-judge and court-assisted ADR.

Research (NCAIR), the Cyberspace Law Institute (CLI), the American Arbitration Association (AAA) and Villanova Law School on October 25, 1995 (Mohamed S. Abdel Wahab, 2012, pp. 387–492). VMP follows its own predefined rules and the rules of the AAA, stipulating that the contending parties of an arbitration need to confirm the above rules before they initiate the process of online arbitration. VMP mainly deals with disputes concerning intellectual property and unfair commercial competition. In 1997 the law school of Université de Montréal launched Cyber Tribunal, offering online arbitration services to settle information technology–related civil and commercial disputes. In 2000 Nova Forum Inc. became the first online arbitration institution specializing in settling commercial and trade disputes and promising to settle a dispute in 72 hours. In 2005 Internet service providers in Georgia, USA established Internet Arbitration (Net-ARB) providing online arbitration services to settle disputes over small claims. In October 2011 Zip Court was established in the USA. It provides more comprehensive online services, including arbitration of all types of disputes.^① The abovementioned institutions (VMP, Cyber Tribunal, Net-ARB, NovaForum Inc. and ZipCourt) all remain web projects or network companies which are not attached to any physical arbitration authority and have their own unique rules and procedures. In 1994 to further promote WIPO^② arbitration and relevant parties' participation and tracking of dispute–settling processes, the World Property Intellectual Organization (WIPO) amended WIPO Expedited Arbitration Rules and specified online arbitration rules. By doing so, it became the first physical arbitration institution to offer online arbitration

services (Ni, 2015). As online arbitration develops, its advantages are being further highlighted and are subsequently recognized by more commercial subjects. In China, the first attempt at online arbitration was made by a physical (offline) arbitration institution in 2000.

2. The development of online arbitration in China

Currently, online arbitration in China is mainly practiced by physical arbitration authorities and there is no online arbitration project or service provider established solely for online arbitration purposes. The existing online arbitration is a simple form of arbitration that transforms offline services into online services.

2.1 CIETAC center for domain name dispute settlement

China International Economic and Trade Arbitration Commission (CIETAC) is the earliest and the largest arbitration institution in China, which provides online services. In December 2000, it launched the Domain Name Dispute Resolution Center, which added a second name—Online Dispute Resolution Center (ODRC) in July 2005. While retaining the original name, Online Dispute Resolution Center (ODRC) became its official name in August 2007. ODRC provides dispute resolution services with regard to domain name registration or use. Such disputes mainly fall into four categories; CN domain squatting (CN/ Chinese domain name disputes. com/other top–level domain name disputes), Internet keyword squatting, wireless website cybersquatting and SMS URL cybersquatting.

① Thomas Schultz. Online arbitration: Binding or non-binding? Retrieved from <http://www.ombuds.org/center/adr2002-11-schultz.html>.

② WIPO ECAF (electronic case facility) is an online platform that allows users to directly upload, submit and search documents, which are recorded in an electronic form.

Based on *CNNIC Solutions to National Top-level Domain Name Disputes Resolution Policy*, ODRC formulated CNNIC Procedural Rules for The Country Code Top-Level (ccTLD) Domain Dispute Resolution, which came into effect in November 2014. The four categories of domain disputes should be settled respectively in accordance with *CNNIC Solutions to Internet Keyword Disputes*, *CNNIC Solutions to Wireless Website Disputes* and *CNNIC Solutions to SMA Disputes*. According to the operational rules, any institution or individual can trigger this arbitration process. First, the applicant should submit a letter of complaint to the CIETA Secretariat, which then completes a formal examination before notifying the relevant CN domain registrant and holder of the complaint and forwarding a copy of the complaint letter to them. The domain registrant and holder are required to submit a statement of defense within 20 days from the start of this process. The CIETA Secretariat then appoints panel members for the review and decision making. The whole arbitration process is completed online, usually within 60 days, and the panel usually gives a ruling within 14 days after its establishment. The minimum charge is RMB 4,000. Over the past three years, this online platform has completed over 60 rulings per year.

2.2 CIETA online arbitration

The China International Economic and Trade Arbitration Commission (CIETAC) is China's earliest and also the most influential commercial arbitration institution. Established by the China Council for the Promotion of International Trade (CCPIT), CIETAC was originally named Foreign Trade Arbitration Commission before it changed to its current name in 1988. CIETAC adopted the name CCOIC Court of Arbitration in 2000 and officially launched its online arbitration services

by introducing *Online Arbitration Rules* on May 1, 2009. According to the arbitration rules, the applicant should submit an arbitration application, a written statement, evidence and other related documents and materials to the CIETAC via e-mail, electronic data interchange (EDI), fax, or other electronic means and the whole arbitration should be completed online. As prescribed in the application rules, the applicant should follow the procedures of online arbitration to make a registration, submit a standard form application, and upload relevant evidence. Meanwhile, the applicant can also submit a letter of authorization, apply for property preservation and evidence preservation, and complete items selected by the arbitrator to further promote online arbitration. The applicant or his/her arbitration agent must add a digital seal or e-signature to the document submitted. The rules are designed to settle e-commerce disputes; deal with data messages generated, sent, received or stored by electronic, optical, magnetic and other similar means; and facilitate mediation and court trials via video conferencing and other digital or computer communication forms. The arbitration institution should give an arbitration award within four months of its establishment date, with a minimum arbitration charge of RMB 4,000 for domestic cases and RMB 14,000 for foreign-related cases.

2.3 Online arbitration performed by other institutions

In October 2015, the Guangzhou Arbitration Commission issued the *Online Arbitration Rules of Guangzhou Arbitration Commission*, officially stepping into the online arbitration business. On April 1, 2017, the Shanghai Arbitration Commission (SHAC) pioneered online arbitration by launching its online filing platform. The Beijing Arbitration Commission (BAC) is working on its online arbitration services and so far only allows online applications for arbitration.

3. Legal countermeasures for the building of an online arbitration mechanism for settling trade disputes along the Belt and Road

3.1 Completing top-down design to build a settlement center for Belt and Road-related trade disputes

The Belt and Road Initiative sets up an equal and open platform for voluntary participants striving for joint development. It is not a political alliance, or a regional economic organization. Unlike WTO, which centers on establishing rules, the Belt and Road Initiative seeks common development and aims to forge a harmonious world. The Belt and Road Initiative proposed by China mainly helps boost economic and trade exchanges between China and countries along the Belt and Road. However, this does not mean that this vast area, including 65 countries, does not need rules. Rather, due to the significant political, economic, and cultural differences among these countries, there is a pressing need for a top-down design and a settlement center for trade disputes. At a time when trade disputes are increasing, it is imperative and inevitable for China to establish a corresponding dispute settlement center. In this regard, there are three aspects to be clarified. The first concerns the nature of this dispute settlement center. According to normal settings, dispute settlement centers can be governmental or non-governmental. For the non-governmental category, the biggest challenge lies in hard-won credibility, followed by the huge costs of platform operation. For the governmental category, the problem is the Belt and Road Initiative merely serves as a public platform, which is not affiliated with any permanent government organization or based on any agreement or protocol co-signed by countries along the Belt and Road. Even so, the introduction of the Belt and Road Initiative itself is already an

innovation and reform of the existing international order. Authoritativeness and credibility is the prerequisite for the existence of this trans-Eurasia center for trade dispute settlement. Therefore, such a center requires government backing. The second aspect concerns the establishment of the dispute settlement center. China is the largest country in this region and the initiator of the Belt and Road Initiative. So far, it has signed cooperation agreements with 40 countries, most of which specified approaches to dispute settlement. And it is exactly these approaches to dispute settlement that form the basis of a dispute settlement center. The intent of this center should be proposed by China and jointly shouldered by the contracting parties along the Belt and Road. The third aspect concerns the operation of the dispute settlement center. A council system should be applied to the dispute settlement center and the contracting member states will subsequently become council members. A management team for daily work should be elected by the center council, whose director oversees regular operations and online arbitration. Moreover, the center council should set up a watchdog committee responsible for reviewing the arbitrator's conduct and justice of ruling. This is to avoid traditional arbitration institution's borrowing of domestic laws and better prevent the excessive interventions from domestic laws.

3.2 Establishing online arbitration rules and introducing an online mediation mechanism for the Belt and Road Initiative

Establishing a dispute settlement center for the Belt and Road Initiative is a prerequisite for the introduction of the online arbitration mechanism, while formulating online arbitration rules for the Belt and Road Initiative is a precondition for the operation of the online arbitration mechanism. The online arbitration mechanism is supposed to be the first tribunal specializing in settling trade disputes along the Belt and Road. All relevant rules, including

those of ICC, AAA, LCIA, SCC, WTO, MIGA^① and ICSID^② are invariably formulated in accordance with the laws of developed economies. In China, several free trade zones, i.e. China (Shanghai) Pilot Free Trade Zone, China (Guangdong) Pilot Free Trade Zone, China (Fujian) Pilot Free Trade Zone, and China (Shaanxi) Pilot Free Trade Zone have formulated different arbitration rules to correspond to zone-specific conditions to settle trade disputes along the Belt and Road. Shanghai No.2 Intermediate People's Court has also introduced guiding opinions to further promote the execution of arbitration procedures. With the establishment of more free trade zones, a variety of arbitration rules will be formulated by different free trade zones in accordance with their own development conditions. This will result in fragmented and order-less arbitration rules and prevent relevant arbitration institutions from building credibility and authoritativeness. Given this, unified arbitration rules should be introduced to justly settle trade disputes along the Belt and Road. When building an online arbitration mechanism for the Belt and Road Initiative, the contending parties need to recognize and accept the pre-set online arbitration rules before they apply for online arbitration. Thus, it is of great importance to ensure openness, fairness and rationality of the applicable arbitration rules and their representation of the maximum interests of countries along the Belt and Road. The online arbitration rules for the Belt and Road Initiative are supposed to be geared to specific judicial practices, echo their inner demands for upgrading and innovating

traditional arbitration rules and highlight their objectives of being fast, convenient and practical. To this end, there are a few steps to take. First, China should extend its scope of arbitration. Driven by the Internet economy, new economic phenomena keep emerging; while traditional trade disputes exhibit in new forms. This can be exemplified by the Belt and Road-related representative cases published by the Supreme People's Court of the PRC. These cases reveal that current trade disputes concern marine transport contracts, offshore pollution damages, equity transfer contracts, intermediation contracts, as well as the Internet economy-based new forms, such as cross-border finance, labor service exports, e-commerce, and finance leases. Therefore, online arbitration can meet the Belt and Road countries' need for economic development and process more types of cases. A broader arbitration scope can extend the application of online arbitration, highlight its convenience and help avoid the complicated legal issues of countries along the Belt and Road. Second, China should introduce an online mediation mechanism. Just like online arbitration, online mediation is for settling disputes. The introduction of online mediation is to have disputes settled more efficiently. Such online mediation is done prior to online arbitration. The contending parties enjoy the right to decide whether to accept online mediation before online arbitration. Those who accept online mediation can choose one of the following two patterns. The first is intelligent system-enabled online meditation, which is similar to the online customer service systems of domestic e-commerce

① Multilateral Investment Guarantee Agency (MIGA) is an international financial institution which offers political risk insurance and credit enhancement guarantees. MIGA offers insurance to cover five types of non-commercial risks: currency inconvertibility and transfer restriction; government expropriation; war, terrorism, and civil disturbance; breaches of contract; and failing to honor financial obligations. These guarantees help investors protect foreign direct investments against political and non-commercial risks in developing countries. When an event occurs that is protected by this insurance, MIGA can exercise the investor's rights against the host country through subrogation to recover expenses associated with covering the claim. However, the agency's convention does not require member governments to treat foreign investments in any special way. As a multilateral institution, MIGA is also in a position to attempt to sort out potential disputes before they turn into insurance claims.

② The International Centre for Settlement of Investment Disputes (ICSID) is an international arbitration institution established based on the Convention on the Settlement of Investment Disputes between States and Nationals of Other States for legal dispute resolution and conciliation between international investors.

platforms like Taobao.com and JD.com. The second pattern is mediator-enabled online mediation. This setup helps to accelerate the settling of cases which are simple, less controversial and legally well-defined and provide more diversified services for the contending parties. Third, China should strive for full autonomy of arbitration and introduce a system of amiable arbitration^① and a system of ad hoc arbitration^②. A whole set of rules to be extensively applied by countries along the Belt and Road should feature inheritance and innovation of existing arbitration rules, because only through inheritance and innovation can such rules be complete and representative. According to Article 19 of the *UNCITRAL Model Law on International Commercial Arbitration* (1985), the contending parties are free to agree on procedures to be observed by the arbitration institution. At present, the two arbitration systems are excluded by most arbitration institutions in China. And an online arbitration mechanism for the Belt and Road is built on the contending parties' consensus and recognition of relevant trade arbitration rules, the core of which is autonomy. The systems of amicable arbitration and ad hoc arbitration can apply arbitration rules recognized by the two contending parties to settle disputes based on their consensus. Alternatively, they can have their arbitration procedures customized to highlight the principles and ethos of the Belt and Road online arbitration mechanism. Such a diversified setup will demonstrate respect and humanistic care for the contending subject.

3.3 Improving supporting mechanisms to ensure effective online arbitration

The online arbitration mechanism for settling trade disputes along the Belt and Road cannot be

built on one single state, international organization or economy. Besides, there are no coercive measures to guarantee this mechanism. Its implementation requires the necessary support from the member states' judicial systems, arbitration staffing and online arbitration-oriented technical platforms. Sound and complete supporting measures are indispensable for ensuring the effective proceeding of online arbitration and the effective execution of an arbitration award. Only in this way can the online arbitration institution for the Belt and Road Initiative be authoritative and meaningful enough to be accepted by countries along the Belt and Road. First, legal support must be guaranteed. The online arbitration mechanism for the Belt and Road Initiative is in nature a "hung arbitration" or "non-domestic arbitration," whose rules and awards are not subject to or under the supervision of any arbitration institution's locality in a traditional sense. This online arbitration mechanism is mainly supervised and reviewed by a watch-dog committee under the dispute settlement center for the Belt and Road Initiative. Whether it is offline or online, arbitration is invariably faced with a realistic problem, i.e. the recognition and execution of the arbitration award. Even if both contending parties are contracting states of the *New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (*New York Convention*), there are still regulations to be observed. These regulations are powerful enough to affect the arbitration's effect and legitimacy and cover a range of issues such as the contracting states' reciprocity reservations, commercial reservations, the formality of the petitions for recognition and execution, the effect of electronic records, the recognition of e-signatures, the acceptance of

① Amiable arbitration usually refers to the arbitration institution's right to rule on a dispute in accordance with principles it recognizes as fair and just under the authorization of the contending parties, without referring to the laws of a particular country.

② Ad hoc arbitration is a proceeding that is not administered by others and requires the contending parties to make their own arrangements for selection of arbitrators. The parties are under discretion to choose the designation of rules, applicable law, procedures and administrative support.

digital evidence, the eligibility of contending parties, the validity of relevant agreements, and the extent of the arbitrators' competence. The settlement of these issues first requires the common accord of members of the dispute settlement center and their signing of relevant documents, followed by negotiations among relevant countries over how to align online arbitration rules, recognition & execution procedures and operational details with their domestic laws. Such online arbitration rules cannot be implemented until being authorized by corresponding authorities. Online arbitration needs sound and complete legal support and should not be performed solely within the framework of the *New York Convention* or else this online arbitration system may be reduced to a simple duplication of traditional offline arbitration. Second, relevant staffing must be improved. The online arbitration mechanism for settling trade disputes along the Belt and Road is in nature an open platform, whose dispute settlement center should perform its duties with an open attitude. Given that countries along the Belt and Road feature complicated political landscapes, varied economic conditions and different legal systems, an ordinary online arbitrator can hardly deal with all arbitration cases on his or her own. Besides, even within the same legal system, the contending parties of an arbitration case may come from different legal cultures. Therefore, the building of an online arbitration mechanism for settling trade disputes along the Belt and Road involves the participation of many professional arbitrators who understand online rules, are familiar with the laws of the relevant countries, and master sufficient humanistic knowledge and high mediation & arbitration expertise. The contending parties

should be allowed to designate an arbitrator from the dispute settlement center or one elsewhere who has registered at the dispute settlement center. Thus, the online arbitration staff should consist of in-house arbitrators and registered external arbitrators. The registration requirements for external arbitrators are to better address the complicated legal conditions of countries along the Belt and Road. The registration requirements should help provide quality arbitration services for the contending parties of a trade and at the same time effectively avoid the result of domestic law-based invalid arbitration caused by the arbitrator's legitimacy. The registration of external arbitrators should be based on the principle of online arbitration autonomy and opening-up. Third, technical support must be enhanced. As a technical platform, the mechanism of online arbitration needs to be equipped with a qualified network to ensure convenient communications between the contending parties. A qualified network is the primary carrier of online arbitration and its core technology lies in two aspects. The first is online mediation technology. Part of online mediation technology concerns automatic mediation, which can be enabled by pre-set technical means. The second aspect is "virtual space" technology. An online arbitration platform needs to provide a variety of basic technologies like synchronous communications,^① asynchronous communications,^② as well as image, text and video processing. Technical support is a prerequisite for the existence and operation of online arbitration. Only with the support of modern network technology can China give full play to online arbitration and provide quality arbitration services for countries along the Belt and Road.

(Translator: Wu Lingwei; Editor: Jia Fengrong)

① Synchronous communications create an "online chat room" for the contending parties and the arbitrator to talk synchronously.

② Asynchronous communications allow the contending parties and the arbitrator to communicate separately via e-mail or other online communication systems.

This paper has been translated and reprinted with the permission of *Journal of Beijing Union University (Humanities and Social Sciences)*, No.5, 2017.

REFERENCES

- Horatia Nuir Watt. (2006). Globalization and comparative law in M.Reimann & R.Zimmermann. *The Oxford handbook of comparative law*. Oxford.
- Joon Ha Jung, Byung Chul Jeon, Byeng D.Youn & Myungyon Kim. (2016). Omnidirectional Regeneration (ODR) of Proximity Sensor Signals for Robust Diagnosis of Journal Bearing Systems. *Mechanical Systems and Signal Processing*, (6).
- Lu Nan. (2017). Law transplantation in the context of the Belt and Road Initiative—Drawing lessons from the two law and development movements in the USA. *Tsinghua Law Review*, (1).
- Mohamed S.Abel Wahab. (2012). *ODR and E-arbitration: Trends and challenges online dispute resolution theory and practice*. Hague: Eleven International Publishing.
- Ni Nan. (2015). A study on the alternative dispute resolution to online transaction disputes. *The Journal of Humanities*, (9).
- Roberto Mangabeira Unger. (2005). *What should the left propose*. London, N.Y.: Verso.
- Zheng Shibao. (2013). Online dispute-settling mechanism's dilemma and countermeasures. *Journal of Northwest University of Political Science and Law*, (6).