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China Guiding Cases Project
Stanford Law School

中国指导性案例项目
斯坦福法学院



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中国指导性案例项目的成就得益于其强大的志愿者团队中200名成员的辛勤努力，当中有来自世界各地的法学院学生、其他研究生、专业翻译和律师。

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Editor's Note*



Dr. Mei Gechlik

Dear Readers,

The 70 years since the establishment of the People's Republic of China on October 1, 1949 cover two different periods. The first three decades experienced significant turbulence arising out of various political movements. In stark contrast, the following four decades saw China rebuild its legal system to support the country's "open door" policy, laying a strong foundation that transformed a poor country into the world's second largest economy.

The international developments in the coming decades will likely be shaped by China's increasing enthusiasm in expanding its global presence. Will China be able to transform itself from an economic powerhouse into a responsible global leader that can effectively work with other countries to jointly find solutions to challenging global issues? An affirmative answer largely depends on China's ability to demonstrate that its values and interests are in line with those embraced by other global players.

The three legal milestones that China achieved after it was welcomed in 2001 as a member of the World Trade Organization are good reminders of the steps that China has taken to bring itself closer to the West:

- (1) In 2003, China's custody and repatriation system, which allowed the police in localities to detain people who could not produce residence permits and return them back to their hometowns, was abolished.
- (2) In 2004, the Chinese constitution was amended with the adoption of a provision that explicitly states that human rights shall be respected.
- (3) In 2013, the re-education through labor system was abolished, in response to the international community's concerns over human rights violations inside the labor camps and criticisms that the system was inconsistent with Chinese legal principles.

These steps marked a good beginning, but more needs to be done to continue demonstrating China's adoption and enforcement of standards that are important to the rest of the world. This issue of *China Law Connect* ("CLC") includes pieces revealing exciting developments along this line and exploring China's engagement of foreign scholars to connect the country with the world:

- A commentary analyzing how lawyers and judges in China used **intellectual property Guiding Cases**—*de facto* binding precedents in the country—in more than 50 subsequent cases. The empirical analysis conducted by myself and **David Wei Zhao**, a Chinese lawyer and Assistant Managing Editor of the China Guiding Cases Project (the "CGCP"), shows how Chinese legal actors, who are generally unfamiliar with using cases, applied or distinguished these precedents. While there is much room for improvement, these legal actors' efforts in using a set of tools created by the Supreme People's Court (the "SPC") of China to protect parties' legal rights and interests and to increase legal certainty are impressive.
- A bilingual version of **Guiding Case No. 108** (*Zhejiang Longda Stainless Steel Co., Ltd. v. A.P. Møller - Mærsk A/S, A Dispute over a Contract for the Carriage of Goods by Sea*), one of the six Guiding Cases released by the SPC to clarify legal issues being encountered in the development of **China's Belt and Road Initiative (the "BRI")**. In the "Main Points of the Adjudication" section of Guiding Case No. 108, the SPC lays out the following principle to guide the adjudication of similar subsequent cases:

According to Article 308 of the *Contract Law [of the People's Republic of China]*, in a contract for the carriage of goods by sea, before a carrier has delivered [certain] goods to a receiver, a consignor has the right to demand changes to the carriage contract. The two parties, however, still need to follow the principle of fairness as stated in Article 5 of the *Contract Law* to determine their respective rights and obligations. When the consignor exercises the right [to demand changes], the carrier may also accordingly exercise a right of defense. If a change to a contract for the carriage of goods by sea is difficult to achieve or will seriously affect the normal operation of the carrier, the carrier may refuse the consignor's request to change the port [of destination] or to return the shipment. However, [the carrier] should notify the consignor, in a timely manner, of the reasons for not being able to make the change.

- A commentary written by **Dr. GUO Wenli**, a former Chinese judge and, currently, Dean of Beiming Software Co., Ltd.'s Research Institute for Social Governance Theory and Business Innovation, that reports on four major innovations created by the Guangzhou Internet Court, including an online dispute resolution platform. Since its launch on March 2, 2019, the online dispute resolution platform has achieved remarkable results. More than 32,000 people have registered to join the platform. From March to August 2019, 17,508 cases were accepted for mediation and 16,501 of these cases were mediated successfully, representing a success rate of 94%. According to the data disclosed in the commentary, these four major judicial innovations are functioning well and may allow for useful lessons from China's experience to be shared with the rest of the world.
- In a *CLC Spotlight*TM piece titled *China's Belt and Road Initiative: Will Italy's Participation Inspire More EU Followers?*, **Jennifer Ingram**, Managing Editor of the CGCP and **Xuejiao Katniss Li**, Editor of the CGCP, address a timely topic as they analyze Italy's BRI membership and related implications. The authors examine major developments in EU-China relations since 2013 and argue that if China can accomplish



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certain achievements in the near future (e.g., demonstrating how a country’s involvement in the BRI can align with its regional and global obligations), more EU countries may feel inspired by Italy’s example to join the global plan.

- A **CGCP Interview** featuring **Ivan Cardillo**, Lecturer in Law at Zhongnan University of Economics and Law, as well as a founding member and President of the Association of Italian Scholars in China. Mr. Cardillo is also the recipient of the 2019 Xu Guangqi Award, which is presented annually by the Italian government to recognize outstanding achievements made by Italian scholars in China. Apart from sharing his thoughts about Italy’s BRI membership, Mr. Cardillo, a long-term CGCP member, also explains his continued support for the project:

I’ve been involved with the CGCP since 2014. [...] At the beginning, the CGCP meant the possibility of studying more in depth the evolution of the Chinese legal system and, as a European scholar, learning how American scholars work and conduct research. Later, as the team kept growing and my understanding of the importance of translation improved, I became more and more involved in this groundbreaking project. The issues we had to face, the further steps taken by the SPC, and finally the [...] BRI made clear that the CGCP is not simply a translation project. Rather, it plays a key role in promoting harmonization of rules, self-awareness, education, and knowledge, as well as promoting understanding of the social impact of law and understanding of the role played by the judiciary at the national and international levels.

The preparation of the abovementioned pieces has kept the CGCP very busy over the past several months. However, we are delighted to see that our hard work has been recognized, as reflected in my **successful speaking tour in China** in July 2019, which brought our analyses and insights about Guiding Cases and other topics to Chinese judges, lawyers, and academics, as well as the publication of the first of a series of dialogues between the CGCP and *China Campus*, a mainstream magazine that reaches more than 36 million college students across China (see the **News and Events** section).

Finally, this issue ends with a piece of art titled “**The Traces of Autumn**” created by **Mr. CHEN Xuncheng**, a master of ceramic art. We are very grateful to Mr. Chen for continuing to let us use his art to decorate the journal cover.

We hope you enjoy the insights and information shared in this issue of *CLC*!

Sincerely,

Dr. Mei Gechlik
 Founder and Director, China Guiding Cases Project
 Editor-in-Chief, *China Law Connect*



* Dr. Mei Gechlik, *Editor’s Note*, 6 CHINA LAW CONNECT v (Sept. 2019), <http://cgc.law.stanford.edu/clc-6-201909>.



熊美英博士

编辑短笺*

尊敬的读者：

中华人民共和国自1949年10月1日成立以来的70年涵盖了两个不同的时期。前30年中国经历了各种政治运动所引起的重大动荡。与之形成鲜明对比的是，在随后的40年中，中国重建了法律制度以支持其对外开放政策，奠定了坚实的基础，将一个贫穷的国家转变为世界第二大经济体。

未来几十年，中国对扩大其全球影响力的热情会增强，而国际发展也可能随之而变。中国能否将自己从经济强国转变为负责任的全球领导者，而此领导者可与其他国家有效合作、共同寻找全球难题的解决方案？对此问题是否可以作出肯定的答案很大程度上取决于中国能否展示其价值观和利益与其他全球参与者所拥护的价值观和利益是一致的。

中国在2001年受到欢迎加入世界贸易组织后所达到的三个法律里程碑很好地提醒了我们，中国确实采取了一些行动使自己与西方更接近：

- (1) 2003年，收容遣送制度被废除。该制度允许警察拘留在某些地方没有居留证的人，并将其送回家乡。
- (2) 2004年，中国修改了其宪法，通过了一项明确规定应尊重人权的条款。
- (3) 2013年，劳动教养制度被废除。这是回应了国际社会对劳教所内侵犯人权的担忧和该制度与中国法律原则不符的批评。

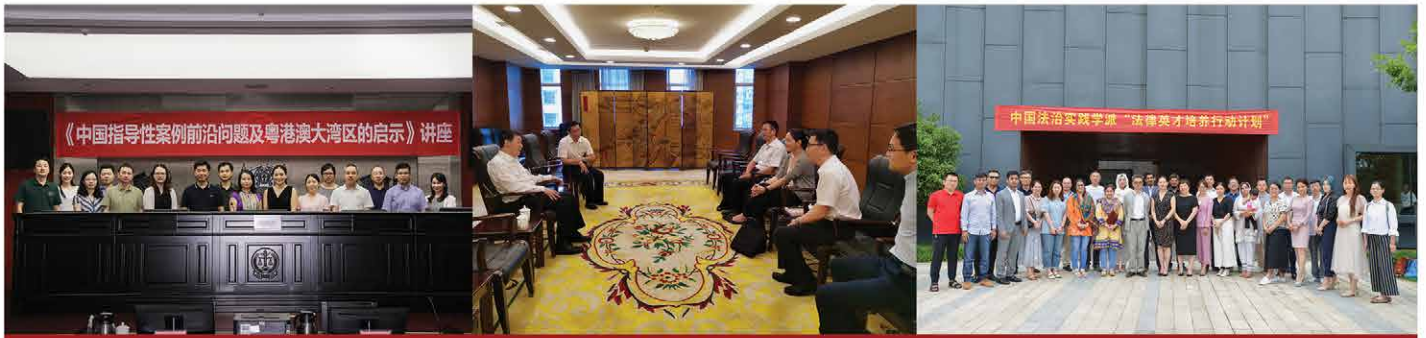
这些行动标志着一个良好的开端，但是还需要做更多的工作来继续展示中国可以采用和执行世界其他地区所重视的标准。本期《中国法律连接》（“《中法连》”）出版了数篇文章，以揭示这一方面令人振奋的发展，以及探索中国如何通过在华的外国学者将中国与世界联系起来：

- 一篇分析了中国律师和法官如何在50多个后续案件中使用**知识产权指导性案例**（即事实上具有约束力的中国案例）的评论文章。在文章中，我和中国律师兼中国指导性案例项目（China Guiding Cases Project；“CGCP”）助理执行编辑赵炜作出实证分析，展示了这些通常都不熟悉使用案例的中国法官和律师是如何适用或区分这些案例的。尽管仍有很大的改进空间，但这些法官和律师通过使用中国最高人民法院（“最高法”）创建的这一“工具”——指导性案例——来保护当事人的合法权益和增加法律确定性所作出的努力令人印象深刻。
- **指导案例108号**（《浙江隆达不锈钢有限公司诉A.P.穆勒-马士基有限公司海上货物运输合同纠纷案》）的双语版。该案例是最高法发布的六个“一带一路”指导性案例之一，旨在阐明中国“一带一路”倡议发展中经常遇到的法律问题。在指导案例108号的“裁判要点”部分中，最高法提出了以下原则来指导类似的后续案件的裁决：

在海上货物运输合同中，依据合同法第三百零八条的规定，承运人将货物交付收货人之前，托运人享有要求变更运输合同的权利，但双方当事人仍要遵循合同法第五条规定的公平原则确定各方的权利和义务。托运行行使此项权利时，承运人也可相应行使一定的抗辩权。如果变更海上货物运输合同难以实现或者将严重影响承运人正常营运，承运人可以拒绝托运人改港或者退运的请求，但应当及时通知托运人不能变更的原因。

- 一篇由前任法官、现任北明软件有限公司社会治理理论及业务创新研究院院长郭文利博士撰写的评论文章。在文中，郭博士解释了广州互联网法院所做出的包括在线纠纷多元化解平台在内的四大司法创新。自2019年3月2日上线后，在线纠纷多元化解平台成就斐然。已有超过32000人注册加入该平台。从2019年3月至8月，总受理案件17508件，调解成功16501件，调解成功率高达94%。根据该文引用的数据，这四大司法创新运行良好，可以为全球提供有用的中国经验。
- 一篇题为“中国的‘一带一路’倡议：意大利的参与会激发更多的欧盟追随者吗？”中法连**聚焦™**的文章。在文中，CGCP执行编辑**英珍妮**和CGCP编辑**李雪皎**探讨了一个适时的话题，就是分析了意大利对“一带一路”倡议的参与和相关含义。作者研究了2013年以来中欧关系的主要发展，并认为如果中国能在不久的将来取得一定成就（例如，证明一个国家参与“一带一路”倡议，仍可以与其区域和全球义务保持一致），那么更多的欧盟国家可能受到意大利的启发而加入这全球计划。
- **CGCP专访：伊万（Ivan Cardillo）**。伊万是中南财经政法大学的法学讲师，还是中国意大利学者协会的创始成员和主席。2019年，伊万获得“徐光启奖”，该奖项每年由意大利政府颁发，以表彰在中国的意大利学者所取得的杰出成就。除了分享他对意大利参与“一带一路”倡议的想法外，作为CGCP的长期成员，伊万还解释了他对该项目的持续支持：

我自2014年以来就一直参与CGCP。[...]最初，CGCP意味着有机会更深入研究中国法律制度的演变，以及作为一名欧洲学者，我可以学习美国学者是如何工作和进行研究的。后来，随着团队不断壮大及我对翻译重要性的理解的提高，我越来越多地参与该开创性项目。一些我们必须面对的问题、最高人民法院采取的进一步措施及“一带一路”倡议等都清楚地表明，CGCP不仅仅是一个翻译项目。相反，它在促进规则的统一、自我意识、教育和知识，以及提升人们对法律的社会影响的理解和他们对司法机构在国家 and 国际层面所扮演角色的理解上都发挥着关键作用。



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在过去的几个月中，CGCP非常忙碌于准备上述文章。但是，我们很高兴看到我们的辛勤工作得到了认可，这体现在我2019年7月在中国作出的成功巡回演讲，与中国法官、律师和学者们分享我们对指导性案例和其他主题的分析 and 见解。这种认可也体现在CGCP与《大学生》的首篇对话的出版。《大学生》是致力服务中国约3600万大学生的主流期刊。（请参阅“新闻和活动”部分）。

最后，本期《中法连》以陶瓷艺术大师陈训成先生创作的名为《秋迹》的艺术作品作结。我们感谢陈先生继续让我们用他的作品来设计本期刊的封面。

我们希望您喜欢本期《中法连》所分享的见解和信息！

敬祝 顺心

熊美英博士
中国指导性案例项目创办人、总监
《中国法律连接》主编辑



* 熊美英博士，编辑短笺，《中国法律连接》，第6期，第vii页（2019年9月），<http://cgclaw.stanford.edu/zh-hans/clc-6-201909>。

About the CGCP

Mission

The China Guiding Cases Project (the “CGCP”) of Stanford Law School aims to advance the understanding of Chinese law and to help develop a more transparent and accountable judiciary in China by engaging experts and other stakeholders around the world to contribute to a unique knowledge-base, undertaking capacity-building activities for legal actors, and promoting public education and participation.

Brief History

In November 2010, the Supreme People’s Court of China (the “SPC”) established the Case Guidance System (案例指导制度), a ground-breaking system in which certain Chinese court judgments are selected and re-issued as *de facto* binding Guiding Cases (“GCs”; 指导性案例) to guide the adjudication of similar subsequent cases and ensure the uniform application of law. Immediately thereafter, Dr. Mei Gechlik founded the CGCP to carry out its historic mission.

Subsequent developments show that select important cases issued to date by the SPC under the Case Guidance System also include Belt and Road (“B&R”) Typical Cases (一带一路典型案例), which showcase how courts in China adjudicate legal issues related to the country’s Belt and Road Initiative (the “BRI”). The growing significance of B&R Typical Cases and the potential impact of the Case Guidance System on the establishment of BRI dispute settlement mechanisms reveal the timeliness and exceptional importance of the CGCP’s mission.

The Team

The CGCP team has grown to nearly 200 law students, other graduate students, lawyers, and translation professionals working across the globe and is advised by more than 50 distinguished experts, including justices from the U.S. Supreme Court and the SPC.

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使命

斯坦福法学院的中国指导性案例项目 (“CGCP”) 旨在通过与世界各地的专家和其他利益相关者共同完善我们独特的知识库、为法律工作人员开展能力建设活动、以及促进公共教育和参与, 提升对中国法律的理解, 并且帮助中国建立一个更加透明、更有问责性的司法制度。

历史简介

2010年11月, 中国最高人民法院 (“最高法”) 建立了具开创性的案例指导制度, 把中国各级人民法院的案例经过遴选、提炼成为指导性案例, 以指导类似的后续案件的审判工作, 确保法律的统一适用。此后, 斯坦福法学院的熊美英博士立即创立了CGCP, 展开其具历史性的使命。

随后的发展表明, 最高法根据案例指导制度所发布的重要案例还包括一带一路典型案例。这些案例展示了中国法院如何判决涉及一带一路倡议的法律问题。一带一路典型案例的日益重要性, 以及案例指导制度对建立一带一路争端解决机制的潜在影响都揭示了CGCP使命的及时性和特殊重要性。

团队

CGCP拥有一支由法学院学生、其他研究生、律师、专业翻译人员组成的约200位成员的国际团队, 并有包括在美国联邦最高法院和中国最高人民法院法官在内的50多位杰出的专家顾问。

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Dr. Mei Gechlik

Founder and Director, China Guiding Cases Project, Stanford Law School

Dr. Mei Gechlik is the Founder and Director of the China Guiding Cases Project (“CGCP”). Formerly a tenured professor in Hong Kong, she began teaching Chinese law and business at Stanford Law School in 2007 and founded the CGCP in 2011. With support from an international team of nearly 200 members and an advisory board of approximately 50 distinguished experts, including justices from the U.S. Supreme Court and the Supreme People’s Court of China, the CGCP has quickly become the premier source of high-quality translations and analyses of Guiding Cases—China’s *de facto* binding precedents—and related legal developments (<https://cgc.law.stanford.edu>). In November 2016, the CGCP launched the Belt and Road Series, taking the lead to analyze the legal and political implications of China’s ambitious global initiative. In June 2018, the CGCP began publishing its quarterly journal, *China Law Connect*, to help deepen the understanding of legal developments related to China, covering various topics, including the important U.S. Supreme Court’s case on vitamin C imports from China.

The CGCP has presented at notable forums, including the World Bank, the Open Government Partnership Global Summit, and U.S.–China Legal Exchange Conferences. In addition, the CGCP and Dr. Gechlik have hosted or participated in multiple events to increase the project’s impact. In October 2017, with approvals from China’s judiciary, the CGCP organized meetings featuring judges from the Beijing Intellectual Property Court to explain how the court’s unique case system has increased judicial consistency and transparency. In March 2018, the CGCP successfully organized a conference titled “China’s Case Guidance System and Belt & Road Initiative: Practical Insights and Prospects”, which featured U.S. and Chinese judges as well as other experts from different parts of the world. In July 2018, Dr. Gechlik spoke on legal exchange and collaboration at the Belt and Road Forum organized by China’s Ministry of Foreign Affairs and, in September, she met with a delegation from the country’s Ministry of Commerce to discuss U.S.–China relations and trade issues.

Prior to joining Stanford Law School, Dr. Gechlik worked from 2001 to 2005 for the Carnegie Endowment for International Peace, a Washington D.C.–based think tank, testifying before the U.S. Congress on various topics about China and advising the United Nations and the Chinese government on implementing rule of law programs. Dr. Gechlik is admitted as a barrister in England, Wales, and Hong Kong and is a member of the Bar in New York and the District of Columbia. She received an M.B.A. in Finance from the Wharton School at the University of Pennsylvania and a Doctor of the Science of Law (J.S.D.) from Stanford Law School.

熊美英博士

斯坦福法学院中国指导性案例项目创办人、总监

熊美英博士是中国指导性案例项目（China Guiding Cases Project；“CGCP”）的创办人与总监。曾于香港任终身教授的熊美英博士，于2007年开始在斯坦福法学院教授中国法律和商业，并于2011年创立CGCP。CGCP拥有一支由近200位成员组成的国际团队，以及一个包括美国联邦最高法院法官和中国最高人民法院法官在内、由50多位杰出专家组成的顾问团体。在成员和顾问的支持下，CGCP已迅速成为具有事实约束力的指导性案例和相关法律发展的优质翻译和分析的重要来源 (<https://cgc.law.stanford.edu>)。2016年11月，CGCP开发了“一带一路”系列，领先分析中国这一雄心勃勃的全球倡议的法律和政治影响。2018年6月，CGCP开始出版其季刊《中国法律连接》，帮助深化对中国相关法律发展的理解，其内容覆盖话题广泛，包括美国联邦最高法院有关进口中国维生素C的这一重要案例等。

CGCP亦受邀在世界银行、开放政府伙伴关系全球峰会，以及中美法律交流会议等各个知名论坛上发表演讲。此外，CGCP和熊美英博士也主办和参加了许多活动以提升项目的影 响。2017年10月，CGCP在中国司法机关的支持下组织了多场会议，邀请北京知识产权法院法官介绍了法院的独特案例制度是如何提高司法透明度和问责。2018年3月，CGCP成功举办了“中国案例指导制度和‘一带一路’倡议：实务见解与前景”大会。会议邀请到了中美法官和来自全球各地的专家。2018年7月，熊美英博士受邀在中国外交部组织的“一带一路”论坛上就法律交流和合作发表演讲。同年9月，她和中国商务部代表团会面，探讨了中美关系和贸易问题。

在加入斯坦福法学院之前，熊美英博士于2001至2005年期间担任华盛顿智囊机构卡内基国际和平基金会的研究员。她曾向美国国会就有关中国的各种课题作证，并对推行法治计划向联合国和中国政府提供建议。熊博士在英格兰、威尔士和香港均有出庭律师执业资格，同时也是纽约和哥伦比亚特区的律师。她获得宾夕法尼亚大学沃顿商学院金融工商管理硕士（MBA）和斯坦福法学院法律科学博士（JSD）。



China Law Connect (“CLC”) is a quarterly journal of the China Guiding Cases Project (the “CGCP”) of Stanford Law School aimed at advancing the understanding of Chinese law and increasing judicial transparency and accountability in China. *CLC* primarily consists of:

1. **Editor’s Note.** Each issue of *CLC* opens with a note from the *CLC* Editor-in-Chief to introduce the content of the issue and discuss related topics.
2. **Letters to the Editor.** *CLC* issues may feature select letters, or excerpts thereof, sent to *CLC* by its readers and responses from *CLC* Editors.
3. **Commentaries.** Each issue of *CLC* contains at least two of the following types of commentaries:
 - **Traditional commentaries**, which are usually longer and provide in-depth and/or extensive contributions to scholarship on China’s Case Guidance System, the Belt & Road Initiative, and/or other matters related to China or Chinese law.
 - **China Cases Insights™**, a series which aims at providing legal and business professionals with concise and practical information, as well as insightful analyses and indispensable takeaways, about cases in or related to China to help these professionals in their practice of law and business.
 - **Experts Connect™**, a series dedicated to the views of Chinese and foreign experts on select legal issues presented for the benefit of legal practitioners, business professionals, and students around the world.
4. **CLC Spotlight™.** Each issue of *CLC* contains at least two pieces which have a less formal but more focused approach, covering topics related to **China or Chinese law**, as well as **CGCP Interviews** with leading legal practitioners, prominent business professionals, and other luminaries.
5. **News, Events, and Sponsored Content.** Each issue of *CLC* includes the latest news and recent and forthcoming events related to the CGCP as well as its partners and sponsors.

《中国法律连接》(“《中法连》”)是斯坦福法学院中国指导性案例项目(“CGCP”)的季刊。该刊旨在促进对中国法律的理解,提高中国司法透明度和问责。《中法连》主要包括:

1. **编辑短笺。**每一期《中法连》都以主编的短笺作开端,介绍该期的内容并讨论相关主题。
2. **读者来信。**《中法连》会选登读者来信或其摘录,以及《中法连》编辑的回复。
3. **评论。**每一期《中法连》包括至少两种以下类型的评论:
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 - **中国案例见解™。**该系列旨在为法律和商业专业人士提供关于中国案例的简明实用信息、有见地的分析和不可或缺的要害,从而帮助这些专业人士的法律和商业实践。
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5. **新闻、活动与赞助内容。**每期《中法连》发布CGCP及其合作伙伴、赞助方的最新消息和近期活动。

The Four Major Judicial Innovations of China's Guangzhou Internet Court*

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Abstract

The Guangzhou Internet Court has actively explored and contributed, within a year, four major judicial innovations regarding online dispute resolution in China: the Online Diversified Dispute Resolution Platform, the Smart Credit Ecosystem with the Network–Law Chain, unmanned court E-legal pavilions, and the Smart System for the Bulk Adjudication of Similar Cases.

These judicial innovations are important applications of Internet technology and artificial intelligence to the dispute resolution field, enriching the practice of online dispute resolution. They provide safeguards for parties to enjoy convenient, efficient, and professional judicial services; open paths for law firms, notaries, and other judicial service institutions to participate in online dispute resolution; and create a rule-of-law business environment for business operators, thereby enhancing their economic vitality. Based on the data cited in this commentary, these four major judicial innovations are well-functioning and successful, and will bring a unique Chinese experience to the exploration of online dispute resolution around the world.

can efficiently authenticate evidence, safeguarding the transparency and efficiency of the judicial process.

The unmanned court E-legal pavilions are mini-courts that can be quickly installed in locations such as law firms, subway stations, and shopping malls, and provide parties with judicial services such as evidence preservation, judicial document printing, online mediation, and online trials in a highly secure and confidential manner. The security and confidentiality function of the E-legal pavilions is critically important for online dispute resolution, and its importance is especially prominent in cross-border disputes to meet each party's varying security and confidentiality requirements. The Smart System for the Bulk Adjudication of Similar Cases enables online bulk access, diversified online dispute resolution, and online bulk adjudication to handle disputes involving Internet financial borrowing and small loan contracts. The system has increased judicial efficiency, met the judicial needs arising from the rapid development of Internet finance, and created a good environment for investment and financing.

Through the above four judicial innovations, the Guangzhou Internet Court has changed traditional methods of dispute resolution and legal services, creating a more efficient, transparent, and equitable rule-of-law environment for China.

Introduction

The four major inventions of ancient China—papermaking, the compass, gunpowder, and printing—were significant innovations, contributing to the development of world civilization. In the current Internet era, China's Guangzhou Internet Court¹ has also introduced four major innovations—the Online Diversified Dispute Resolution Platform, the Smart Credit Ecosystem with the Network–Law Chain, unmanned court E-legal pavilions, and the Smart System for the Bulk Adjudication of Similar Cases—that have contributed to China's online judicial development.

Specifically, the Online Diversified Dispute Resolution Platform provides online mediation, allowing parties to avoid a lengthy litigation process and high attorney's fees. Through the Smart Credit Ecosystem with the Network–Law Chain, parties can store evidence online, while judicial authorities can obtain evidence with a single click and

Online Diversified Dispute Resolution Platform

To encourage parties to choose a convenient and economic non-litigation method to resolve 11 types of Internet-related disputes under the jurisdiction of the Guangzhou Internet Court,² the Guangzhou Internet Court, in adherence to the modern dispute resolution philosophy of having “national leadership, judicial promotion, social participation, simultaneous implementation of various measures, and rule-of-law safeguards”, entrusted Beiming Software Co., Ltd. to develop and build an online diversified dispute resolution platform. The platform was launched on March 2, 2019 (see **Sidebar**).

This platform is based on cutting-edge technologies, such as big data, artificial intelligence, and blockchain. It has multiple functions, including smart consulting (i.e., a user inputs keywords and the platform automatically produces answers and related regulations and cases);

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Dr. GUO Wenli previously served as a judge at the Intermediate People’s Court of Huzhou Municipality, Zhejiang Province, as a member of the court’s Adjudication Committee, and as director of the court’s Research Office. He was seconded to work at the Supreme People’s Court in 2017. From May 2018 to the present, Dr. Guo has served as general manager of the Legal Business Department of Beiming Software Co., Ltd. (<http://www.bmssoft.com.cn>), where he is responsible for legal and technological product innovation, and for actively promoting online dispute resolution in China. At the same time, as dean of the company’s Research Institute for Social Governance Theory and Business Innovation, Dr. Guo researches and explores the application of information technology such as big data, cloud computing, and blockchain to the judicial field, and incorporates the latest social governance policies and theories to optimize social governance methods, advance smart governance work, and contribute to China’s creation of a modern social governance structure. In addition, Dr. Guo is an adjunct researcher at the National Rule of Law Index Research Center of the Chinese Academy of Social Sciences, a part-time graduate student supervisor at Guanghua Law School of Zhejiang University, and a legislative expert on the Standing Committee of the People’s Congress of Huzhou Municipality, Zhejiang Province. He also actively participates in cutting-edge theoretical research, teaching, and local legislative work on online dispute resolution.



smart assessment (i.e., a user inputs case details and the platform analyzes and then produces an assessment report for the user’s reference); online mediation (i.e., a user uses a WeChat applet or web client to participate remotely in a mediation); online settlement (i.e., after the corporate mediator on the platform indicates his or her identity, the mediator carries out the settlement work on behalf of the disputing enterprise and the disputing party); judicial confirmation (i.e., a user can apply online for judicial confirmation of a mediation agreement); and online case registration (i.e., a user can use a WeChat applet to apply online to a court for registering a case).

This platform has three major features:

- (1) The platform’s online mediation function can handle not only domestic disputes, but also **cross-border disputes**.
- (2) For situations where the parties to a mediation cannot be online at the same time, or where they must first consult with a professional before making a

reply, the platform can also provide an **asynchronous mediation function**, through which the parties to the dispute can arrange to participate in the mediation at different times according to their own needs.

- (3) The platform has succeeded in **integrating mediation and adjudication within the Guangdong–Hong Kong–Macao region**. For example, in a mediation case, the Guangzhou Internet Court commissioned Dr. LUO Weixiong and Director ZHANG Siqi of the Hong Kong Mediation Centre to conduct the mediation. This platform was used to provide mediation services for a dispute between the plaintiff, whose lawyer was in Beijing, and the Macao business owner of Hutaoli Restaurant, who was in Guangzhou. This case truly realized a cross-jurisdictional, cross-regional, and cross-linguistic resolution to the dispute. *The People’s Court Daily* published a special report on this case.³

In order to enhance the dispute resolution capability of the Online Diversified Dispute Resolution Platform, other related dispute resolution platforms and enterprise platforms can join the Online Diversified Dispute Resolution Platform or link with it for cooperation. At present, the Online Diversified Dispute Resolution Platform has already brought together dispute resolution resources, including lawyers, arbitration institutions, industry associations, and corporate mediators from the Guangdong Hong Kong–Macao Greater Bay Area.

With respect to the institutions that have joined the platform, in addition to the 24 mainland mediation institutions, including the

Sidebar:**Milestones of the Guangzhou Internet Court**

September 28, 2018	Establishment of the Guangzhou Internet Court
March 2, 2019	Launch of the Online Diversified Dispute Resolution Platform
March 30, 2019	Launch of the Smart Credit Ecosystem with the Network–Law Chain
May 28, 2019	Introduction of unmanned court E-legal pavilions
August 10, 2019	Launch of the Smart System for the Bulk Adjudication of Similar Cases

Internet Society of China, the Guangdong Intellectual Property Protection Center, and the Guangzhou Arbitration Commission, there are also two Hong Kong mediation institutions, namely the International Dispute Resolution & Risk Management Institute and the Mainland–Hong Kong Joint Mediation Center.

With respect to the mediators who have joined the platform, in addition to the mediators of the mediation institutions participating on the platform, there are 63 mediators from Internet companies such as Alibaba, Tencent, ByteDance, Baidu, Pinduoduo, Meituan, Netease, Jingdong, Sina, Huawei, Vipshop, and Ctrip, or their mediation committees. These mediators participate in the settlement and mediation of related disputes on the platform that involve their own companies. In addition, following approval by the Supreme People’s Court, 50 mediators will be invited from Hong Kong, Macao, and Taiwan to work on the platform.

The Online Diversified Dispute Resolution Platform of the Guangzhou Internet Court has achieved remarkable results. From its launch on March 2, 2019 to August 26 of the same year, 32,428 people registered to join the platform. Among them, 26,361 people⁴ have already completed the platform’s real-name authentication. There have been a total of 116,517 visits, 13,126 smart consultations, 17,508 cases accepted for mediation, 16,501 successful mediations, and a mediation success rate as high as 94 percent.

Smart Credit Ecosystem with the Network–Law Chain

In order to offer credible data to judicial authorities, avoid disputes, and provide references for social governance based on big data, the Guangzhou Internet Court launched the Smart Credit Ecosystem with the Network–Law Chain on March 30, 2019 (see **Sidebar**). This system, which is based on blockchain technology, adheres to the “ecosystem” philosophy⁵ and consists of “one chain and two platforms”, i.e., a judicial blockchain, a trusted platform for electronic evidence, and a judicial credit co-governance platform. The system has not only provided convenience for parties participating in lawsuits, but also significantly enhanced the fairness and transparency of the judicial process.

“From its launch on March 2, 2019 to August 26 of the same year, [...] 17,508 cases accepted for mediation, 16,501 successful mediations, and a mediation success rate as high as 94 percent.”

The judicial blockchain consolidates the foundation for the encryption, storage, and exchange of the entire system’s underlying data. Relying on the judicial blockchain’s tamper-proof information feature, the trusted platform

for electronic evidence allows for the standardized storage and secure retrieval of electronic data, meeting the online adjudication needs of the Internet Court. The judicial credit co-governance platform relies on the judicial blockchain’s data transmission and safe access features to provide channels for the platform’s co-constructing parties to share credit data. Through big data analysis and mining technology, the platform enables the generation and output of each institution’s multidimensional credit information assessment reports.

To ensure the neutrality and reliability of the Smart Credit Ecosystem with the Network–Law Chain, the allied nodes⁶ of this system consist of eight political and legal units in Guangzhou.⁷ At the same time, in order to strictly protect trade secrets and personal privacy, this system relies on the “smart judiciary” government cloud to provide decentralized, de-commercialized technology support, and stores only data summary values, with no raw data.

The Smart Credit Ecosystem with the Network–Law Chain can provide the following conveniences:

- (1) By connecting the platforms of each of the major Internet companies, it allows for one-click access to litigation-related electronic data according to one’s needs.
- (2) It provides financial institutions and Internet companies with a standard service interface, allowing the submission of electronic data in bulk.

In the Internet era, the number of contracts entered into by financial institutions and Internet companies has grown exponentially. These contractual acts all share a common form of legal relationship, are of a similar type, and give rise to similar kinds of disputes. Under the traditional model of judicial adjudication, these institutions and enterprises need to expend large amounts of time, energy, and money to meet their burden of proof in each dispute, and judicial organs also need to similarly expend large amounts of judicial resources to try each of these disputes, with the judicial cost being relatively high. By using the blockchain technology and trusted platform for electronic evidence of the Smart Credit Ecosystem with the Network–Law Chain, evidence of the contractual conduct of these institutions and enterprises can be automatically stored from beginning to end, and evidence for all similar disputes can be retrieved in bulk with a single click and adduced at trial, saving significant amounts of time, energy, and money. Judicial organs can also register all cases at once and try them, increasing judicial efficiency and reducing judicial costs.

- (3) The system can provide a high-quality evidence storage blockchain through administrative norms and access standards set up to support the system, and most of the evidence stored within it can be automatically approved by judicial authorities, simplifying the parties' process of adducing and cross-examining evidence. At the same time, these norms and standards can ensure that qualified third-party judicial service institutions can gain access and provide services to the parties.

In order for the Smart Credit Ecosystem with the Network–Law Chain to quickly handle a large number of Internet disputes, the system requires a high-quality evidence storage blockchain to increase the efficiency of evidence authentication. A prerequisite for building a high-quality evidence storage blockchain is to have supporting administrative norms and access standards that ensure qualified access to the blockchain. With this foundation in place,⁸ together with the blockchain's decentralized and tamper-proof evidence storage features, evidence stored on the blockchain is similar to evidence that has been certified through the statutory notarization process, and should automatically receive the approval of the judicial organs except where there is sufficient contrary evidence to prove otherwise.

From its launch on March 30, 2019 through August 26 of the same year, the Smart Credit Ecosystem with the Network–Law Chain included a total of 17 evidence storage parties with access to the trusted platform for electronic evidence, including Hangzhou Tiangu Information Technology Co., Ltd. and Shenzhen Tencent Computer System Co., Ltd.⁹ A total of 13,882,363 pieces of evidence were stored, evidence was retrieved 432 times, and a total of 245 cases involved judicial blockchain evidence.

Unmanned Court E-Legal Pavilions

To meet the needs of the Internet community to resolve disputes, on May 28, 2019, the Guangzhou Internet Court introduced unmanned court E-legal pavilions, providing a new type of smart judicial convenience terminal (see **Sidebar**). E-legal pavilions run on 5G networks and can ensure ultra-high definition sound and video transmissions. E-legal pavilions integrate a controllable cloud terminal and thus, they can make audio and video recordings of a party's conduct and of the system screen from beginning to end. The evidence can be stored by third-party evidence storage institutions approved by the Smart Credit Ecosystem with the Network–Law Chain, ensuring the safety, standardization, and traceability of a party's evidence storage.

Inside the E-legal pavilion, a party or his representative can quickly complete an online case registration by selecting



An unmanned court E-legal pavilion

a cause of action, filling in the information, and scanning and submitting the case materials, and can check case registration information through one of three methods—swiping an ID card, entering a search code, or scanning a QR code. To ensure that relevant served documents are signed by the party himself, the party, after logging into the system, must select the case under his name for electronic confirmation. The system will photograph the party and make a record, and the party can then print the documents in bulk. With the aid of the Online Diversified Dispute Resolution Platform, a party can, after reserving a login time, use the E-legal pavilion to participate in mediation activities. With the aid of the online trial system, a party can, after completing an application in accordance with the operational guidelines, also participate in an online trial.

From their introduction on May 28, 2019 through August 26 of the same year, E-legal pavilions entered service in 12 locations, such as the Guangzhou Internet Court, the Bureau of Justice of Guangzhou Municipality, the Hong Kong International Dispute Resolution & Risk Management Institution, and the Macao Mediation Association.¹⁰ A total number of 3,305 self-service cases were registered, with the online case registration rate reaching 100%. There were 152 online mediation disputes, 6,671 people were served with documents online, and 31 online trials were held.

Smart System for the Bulk Adjudication of Similar Cases

On August 10, 2019, the Guangzhou Internet Court launched the Smart System for the Bulk Adjudication of Similar Cases (see **Sidebar**), and at the same time issued the *Procedural Guidelines of the Guangzhou Internet Court for the Online Bulk Resolution of Internet Financial Borrowing and Small Loan Contract Disputes (Trial)*. These guidelines are China's first guidelines on online procedures specifically for handling Internet financial borrowing and small loan contract disputes. They provide for, among other topics, online bulk access, online diversified resolution, and online bulk quick ruling for such disputes.

The Smart System for the Bulk Adjudication of Similar Cases adheres to the philosophy of dispute prevention, and incorporates Internet technology to make six aspects of innovation in the mechanism:

- (1) **Determination of bulk access standards.** The bulk access standards have been clarified in eight respects: identity verification, evidence qualification, method of service, compliance level, mode of enforcement, loan target, risk control, and advance commitment.
- (2) **Front-loading of adjudication rules.** A portion of the adjudication rules has been front-loaded as part of the dispute access standards. When bulk access is handled, the system fully reviews content in loan products that are closely related to the rights, obligations, and liabilities of the parties so as to facilitate the swift adjudication of cases in the future. The content includes the interest, expenses, collection methods, liability for breach of contract, format clauses, and collection of personal information.
- (3) **Innovative adjudication methods.** Leveraging the advantage of online dispute resolution that overcomes time and space restrictions, the system allows for all phases of litigation to be handled in bulk online. On the premise of safeguarding the rights of the parties, the adjudication procedures are simplified, and online methods are used to guide the parties in adducing evidence and fully expressing their opinions within the time specified by the court. For cases in which facts can be ascertained, they can be adjudicated without trial, after both parties agree.
- (4) **“One-stop” non-litigation resolution.** Various types of non-litigation methods, such as mediation and settlement, are used comprehensively to resolve disputes on an online platform and to quickly realize creditor’s rights and interests.
- (5) **Utilization of lost contact restoration technology.** For parties who could not be contacted, the Guangzhou Internet Court uses big data to mine contact details left

“From [the] introduction [of E-legal pavilions] on May 28, 2019 through August 26 of the same year, [...] 3,305 self-service cases were registered [...]. There were 152 online mediation disputes, 6,671 people were served with documents online [...]”

by these parties with telecommunications operators, social platforms, and online shopping platforms. Once they can be contacted, relevant documents can be formally served by the court.

- (6) **Intelligent generation of adjudication documents.** With the aid of artificial intelligence technology, adjudication documents are prepared in bulk using writ-, element-, and form-styles.

At present, the Smart System for the Bulk Adjudication of Similar Cases can be connected with a lender’s platform for storing evidence and databases. Relevant dispute data can be imported into the court system with a single click, enabling intelligent, one-click automatic bulk registration of cases, matching, and review. From August 10, 2019, when the Smart System for the Bulk Adjudication of Similar Cases was launched, to August 26 of the same year, the registration of four batches of cases was completed through the system, and the number of cases registered in each of these batches was 20, 200, 6,700, and 7,000, respectively, for a total of 13,920 cases. The Guangzhou Internet Court is currently working to promote data exchange with local financial regulators, industry associations, financial institutions, and evidence storage companies.

Conclusion

The “Four Major Judicial Innovations” of the Guangzhou Internet Court have enriched the practice of online courts and provided a Chinese example for the development of online courts around the world. This is worthy of attention. In the future, the Guangzhou Internet Court will also work hard to promote the virtual Internet court program, contributing to the creation of online courts in the virtual space. ■

* The citation of this Commentary is: Dr. GUO Wenli, *The Four Major Judicial Innovations of China’s Guangzhou Internet Court*, 6 CHINA LAW CONNECT 1 (Sept. 2019), also available at STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, Sept. 2019, <http://cgc.law.stanford.edu/commentaries/clc-6-201909-29-guo-wenli>. The original, Chinese version of this Commentary was edited by Rainy Ruoyu Ren, Baneoss Xinyue Zhu, and Dr. Mei Gechlik. The English version was prepared by Haoxuan Cheng, Straton Papagiannas, Jeremy Schlosser, Haiyun Zhang, and Baneoss Xinyue Zhu, and was finalized by Jeremy Schlosser, Nathan Harpainter, and Dr. Mei Gechlik. The information and views set out in this Commentary are the responsibility of the author and do not necessarily reflect the work or views of the China Guiding Cases Project.

¹ The Guangzhou Internet Court was formally established on September 28, 2018 and is responsible for exercising jurisdiction over 11 types of Internet cases that should be accepted by basic people’s courts of Guangzhou Municipality (see *infra* note 2). See 孙航、隋岳、段莉琼 (SUN Hang, SUI Yue, & DUAN Liqiong), 为网络空间治理法治化贡献广州智慧 广州互联网法院挂牌成立 (*The Guangzhou Internet Court is Established to Contribute Guangzhou’s Wisdom to the Governance of Cyberspace by the Rule of Law*), 《中国法院网》(WWW.CHINACOURT.ORG), Sept. 28, 2018, <https://www.chinacourt.org/article/detail/2018/09/id/3517007.shtml>.

² The 11 types of Internet-related disputes are: (1) disputes arising from the signing or performance of online shopping contracts through e-commerce platforms; (2) disputes involving Internet service contracts signed and performed on the Internet; (3) disputes involving financial borrowing contracts and small loan contracts signed and performed on the Internet; (4) disputes involving the ownership of a copyright or neighboring right in the first publication of a work on the Internet; (5) disputes arising from the



infringement of the copyright or neighboring right of a work published or disseminated on the Internet; (6) disputes involving Internet domain name ownership, infringement, and contracts; (7) disputes arising from the infringement of civil rights and interests, such as the personal and property rights of others, on the Internet; (8) product liability disputes involving harm to the personal or property rights of others caused by the presence of defects in products purchased on e-commerce platforms; (9) Internet public interest lawsuits brought by procuratorial organs; (10) administrative disputes arising from administrative acts, including Internet information service management, Internet commodity trading, and related service management; (11) other Internet civil and administrative cases over which higher-level courts have assigned jurisdiction. See 林晔晗、潘玲娜 (LIN Yehan & PAN Lingna), 广东高院明确广州互联网法院管辖范围 (*Guangdong High Court Clarifies the Jurisdiction of the Guangzhou Internet Court*), 《人民法院报》(PEOPLE'S COURT DAILY), Sept. 28, 2018, http://rmfyb.chinacourt.org/paper/html/2018-09/28/content_144062.htm?div=-1.

- ³ See 五“度”煲出跨域调解“头啖汤”——广州互联网法院创新粤港澳在线解纷工作纪实 (*The Five Measures Taken to Prepare the First Cross-Jurisdictional Mediation—Report of the Guangzhou Internet Court's Innovative Guangdong-Hong Kong-Macao Online Mediation Work*), 《人民法院报》(PEOPLE'S COURT DAILY), July 13, 2019, <http://courtapp.chinacourt.org/fabu-xiangqing-170522.html>.
- ⁴ After users register to join the platform, they can browse the platform and use the smart consultation function. However, if there is a need for dispute resolution, the user must complete the real-name authentication prior to formally entering into the dispute resolution process, which includes, among other services, online mediation and online litigation.
- ⁵ This “ecosystem” refers to a collection of a software platform and its specific applications. See AMRIT TIWANA, *PLATFORM ECOSYSTEMS: ALIGNING ARCHITECTURE, GOVERNANCE, AND STRATEGY* (Morgan Kaufmann Publishers, 2013), at 5–6.
- ⁶ Blockchains can generally be divided into public chains, private chains, and allied chains. The Network-Law Chain is an allied chain, consisting of authorized nodes and these nodes are called allied nodes. See 什么是节点? (*What are Nodes?*), BINANCE ACADEMY, Sept. 25, 2019, <https://www.binance.vision/zh/blockchain/what-are-nodes>.
- ⁷ These eight political and legal units are the Intermediate People's Court of Guangzhou Municipality, the People's Procuratorate of Guangzhou Municipality, the Guangzhou Intellectual Property Court, the Guangzhou Railway Transportation Intermediate Court, the Bureau of Justice of Guangzhou Municipality, the Guangzhou Arbitration Commission, the Guangzhou Nanfang Notary Public Office, and the Guangzhou Notary Public Office.
- ⁸ The Guangzhou Internet Court has issued a series of normative documents, such as the *Technical Requirements for the Judicial Blockchain Basic Platform* and the *Safe Service Requirements for the Blockchain Basic Platform*, which clarify the standards for accessing the blockchain and ensure the reliability of blockchain evidence. In addition, the Guangzhou Internet Court has issued the *Standards for Accessing and Managing the Trusted Platform for Managing Electronic Evidence (Trial)* and the *Data Format Standards for the Evidence Storage Platform (Trial)* to ensure uniform standards for evidence storage, laying a foundation for the prompt determination of the veracity of blockchain evidence.
- ⁹ The 15 other evidence storage parties are: Shanghai Qiyin Information Technology Co., Ltd., Ant Financial Services Group, Beijing Trustdo Technology Co., Ltd., Truth Technology (Beijing) Co., Ltd., Beijing Jingdong Century Trading Co., Ltd., Hangzhou YIBI Technology Co., Ltd., Shenzhen ANLO Technology Co., Ltd., Beijing UniTrust Technology Service Co., Ltd., China Financial Certification Authority, Baidu Online Network Technology (Beijing) Co., Ltd., Blockchain New Technology (Guangzhou) Co., Ltd., Guangzhou NetEase Computer Systems Co., Ltd., Gongdao Network Technology Co., Ltd., DataQin Technology Co., Ltd., and Xiamen Meiya Pico Information Co., Ltd.
- ¹⁰ The eight other locations are: the China Telecom Guangzhou Machang Road Business Hall, the Guangzhou Lawyers Association, Guangzhou Zhonglun Law Firm, Guangzhou East Law Firm, Guangzhou ETR Law Firm, Guangdong Haiyin Law Firm, Guangdong Haizhi Law Firm, and Hong Kong Huang Shuhui Law Firm (Guangzhou Representative Office).

中国广州互联网法院的四大司法创新*

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摘要

广州互联网法院积极探索，在一年之内为中国在线纠纷解决做出了四大司法创新：在线纠纷多元化解平台、网通法链智慧信用生态系统、无人法院E法亭、类案批量智审系统。这些司法创新是互联网技术、人工智能在争议解决领域中的重要应用，丰富了在线纠纷解决的实践，为当事人享受便捷、高效、专业的司法服务提供了保障；为律师事务所、公证机构等司法服务机构参与在线解纷开拓了通道；为商业经营者创造了法治营商环境，提升其经济活力。根据本文引用的数据，这四大司法创新运行良好，成就斐然，将为全球在线纠纷解决的探索提供独特的中国经验。

通过以上四项司法创新，广州互联网法院改变了传统纠纷解决及法律服务方式，为中国营造了更加高效、透明、公正的法治环境。

在线纠纷多元化解平台

为鼓励当事人选择便捷经济的非诉方式解决广州互联网法院管辖的11类涉网纠纷案件，² 广州互联网法院秉持“国家主导、司法推动、社会参与、多元并举³、法治保障”的现代纠纷解决理念，委托北明软件有限公司开发建设了在线纠纷多元化解平台，并于2019年3月2日发布上线（见侧边栏）。

该平台以大数据、人工智能、区块链等前沿技术为基础，包含了智能咨询（即用户输入关键词，平台自动推送答案和相关法规、案例）、智能评估（即用户输入案件详情，平台分析后形成评估报告供用户参考）、在线调解（即用户利用微信小程序或网页客户端远程参与纠纷调解）、在线和解（即入驻平台的企业调解员表明身份后，代表纠纷企业与纠纷当事人开展和解工作）、司法确认（即用户可以在线申请调解协议的司法确认）、在线立案（即用户可以利用微信小程序在线申请法院立案）等多项功能。

该平台有三大特色：

- (1) 平台的在线调解功能不仅能够处理国内纠纷，还可以处理跨境纠纷。
- (2) 针对调解双方不能同时间在线，以及需要先咨询专业人士才能作出回复的应用场景，平台还可以提供异步调解功能；纠纷当事人可以按照自己的需要安排在不同时间上线参与调解。
- (3) 平台实现了粤港澳三地调解与审判的相结合。例如，在一起调解案例中，广州互联网法院

侧边栏：

广州互联网法院的里程碑

2018年9月28日	广州互联网法院正式成立
2019年3月2日	发布上线在线纠纷多元化解平台
2019年3月30日	发布上线网通法链智慧信用生态系统
2019年5月28日	推出无人法院E法亭
2019年8月10日	发布上线类案批量智审系统

引言

中国古代四大发明——造纸术、指南针、火药、印刷术——是伟大的创新，为世界文明发展做出了贡献。在当前的互联网时代，中国广州互联网法院¹也推出了四项伟大的创新——在线纠纷多元化解平台、网通法链智慧信用生态系统、无人法院E法亭、类案批量智审系统，为中国在线司法发展做出了贡献。

具体而言，在线纠纷多元化解平台提供在线调解，让当事人避免冗长的诉讼程序及高昂的律师代理费。通过网

“自2019年3月2日上线至同年8月26日，[···]受理调解案件共17508件，调解成功16501件，调解成功率高达94%。”

网通法链智慧信用生态系统，当事人能够在线存证，司法机关能够一键取证、高效认证，保障了司法程序的透明、高效。无人法院E法亭则是迷你版的法院，可以快速安放在律师事务所、地铁站、商场等地，以高度安全保密的方式为当事人提供证据保存、司法文书打印、在线调解、在线开庭等司法服务。E法亭的安全保密功能在在线纠纷解决中非常重要，其重要性在跨境纠纷中尤为突出，以满足各方当事人对安全保密的不同要求。类案批量智审系统对互联网金融借款、小额借款合同纠纷实行在线批量准入、在线多元化解、在线批量速裁，提高了司法效率，满足互联网金融高速发展的司法需求，创造良好的投融资环境。

郭文利博士**北明软件有限公司法律业务部总经理、社会治理理论及业务创新研究院院长**

郭文利博士曾任浙江省湖州市中级人民法院法官、审判委员会委员、研究室主任，2017年借调至最高人民法院工作。2018年5月至今，郭博士担任北明软件有限公司(<http://www.bmssoft.com.cn>)法律业务部总经理，负责法律科技产品创新工作，在中国积极推广在线纠纷解决。同时，作为该公司的社会治理理论及业务创新研究院的院长，郭博士研究探索大数据、云计算、区块链等信息技术在司法领域的应用，结合社会治理最新政策及理论，优化社会治理方式，推进智能化治理工作，为中国建设现代化社会治理格局贡献力量。

此外，郭博士作为中国社会科学院国家法治指数研究中心客座研究员、浙江大学光华法学院兼职硕士研究生导师、浙江省湖州市人大常委会立法专家，还积极参与在线纠纷解决的前沿理论研究、教学以及地方立法工作。



委托香港和解中心罗伟雄博士、张思琪主任主持调解，利用该平台为位于北京的原告代理律师和身处广州的胡桃里餐厅澳门籍经营者之间的纠纷提供调解服务，真正实现跨地域、跨地域、跨语系的止争。人民法院报对此做了专门报道。⁴

为了提升在线纠纷多元化解平台的纠纷解决能力，相关的其他纠纷解决平台、企业平台均可直接入驻或者对接合作。目前，在线纠纷多元化解平台已汇聚粤港澳大湾区的律师、仲裁机构、行业协会、企业调解员等解纷资源。就加入平台的机构而言，除中国互联网协会、广东省知识产权保护中心、中国广州仲裁委员会等24家大陆调解机构，还有2家香港调解机构，即国际争议解决及风险管理协会和内地—香港联合调解中心。就加入平台的调解员而言，除参与平台的调解机构本身的调解员之外，平台还有63名来自阿里、腾讯、字节跳动、百度、拼多多、美团、网易、京东、新浪、华为、唯品会、携程等互联网企业或其调解委员会的调解员。这些调解员参与自身企业在平台上发生的相关纠纷的和解及调解工作。此外，待最高人民法院批准后，还将有50名港澳台的特邀调解员入驻平台。

广州互联网法院的在线纠纷多元化解平台运行成效显著。自2019年3月2日上线至同年8月26日，已有32428人注册加入该平台，其中完成平台实名认证的已有26361人，⁵总访问量达116517次，智能咨询13126次，受理调解案件共17508件，调解成功16501件，调解成功率高达94%。

网通法链智慧信用生态系统

为了给司法机关提供可信数据，预防纠纷，并为大数据社会治理提供参考依据，2019年3月30日，广州互联网法院上线了网通法链智慧信用生态系统（见侧边栏）。系统以区块链技术为基础，坚持“生态系统”理念，⁶打造“一链两平台”，即司法区块链、可信电子证据平台、司法信用共治平台，不仅为当事人参与诉讼提供便利，还极大提升司法流程的公正透明度。

司法区块链为整个系统底层数据的加密、存储和交换夯实基础。可信电子证据平台依靠司法区块链信息不可篡改的特性，实现电子数据的规范存储、安全调取，满足互联网法院在线审判需求。司法信用共治平台，依靠司法区块链的数据传输、访问安全的特性，为平台共建方之间共享信用数据提供渠道，并通过大数据分析、挖掘技术，实现各机构多维度信用信息评估报告的生成与输出。

为确保网通法链智慧信用生态系统的中立可靠，该系统联盟节点⁷由八家广州市的政法单位组成。⁸同时，为了严格保护商业秘密和个人隐私，该系统依托智慧司法政务云，提供去中心化、去商业化技术支撑，只存储数据摘要值、不存储原始数据。

网通法链智慧信用生态系统能够提供以下便利：

- (1) 它通过对接各大互联网企业平台，使涉讼电子数据能够按需“一键调取”。
- (2) 它为金融机构、互联网企业提供标准服务接口，实现批量提交电子数据。

在互联网时代，金融机构、互联网企业的合同纠纷数量呈几何级趋势增长，这些缔约行为法律关系单一，类型相同，产生的纠纷情形相似。按照传统司法审判模式，这些机构、企业需要花费大量的时间、精力和金钱逐件纠纷完成举证义务，司法机关也同样需要耗费大量司法资源来逐件审理这些纠纷，司法成本较高。利用网通法链智慧信用生态系统的区块链技术 and 可信电子证据平台，这些机构、企业的缔约行为可以全程自动化存证，所有类似纠纷的证据可以大批量的一键调取，完成举证，节省大量的时间、精力和金钱，而司法机关也可以一次性全部立案、审理，提高司法效率，降低司法成本。

- (3) 通过配套的管理规范、接入标准，系统能够提供高质量的存证区块链，而存储于其中的证据

大多能自动获得司法机关的认可，简化了当事人的举证质证程序。同时，这些规范与标准可以确保合格的第三方司法服务机构接入，为当事人提供服务。

要让网通法链智慧信用生态系统迅速处理大量互联网纠纷，它需要一个高质量的存证区块链，以提高证据认证效率。而建立高质量的存证区块链的前提是配套的管理规范、接入标准，以确保接入的区块链合格。有这样的基础后，⁹ 再加上区块链存证的去中心化和不可篡改特性，存于区块链的证据类似于经过法定公证程序证明的证据，应当能够自动获得司法机关的认可，有相反证据足以推翻的除外。



无人法院E法亭

自2019年3月30日上线至同年8月26日，网通法链智慧信用生态系统共有包括杭州天谷信息科技有限公司、深圳腾讯计算机系统有限公司在内的17家存证方接入可信电子证据平台，¹⁰ 存证数量共计13882363条，取证（调证）数量432次，与司法区块链证据相关案件共计245件。

无人法院E法亭

为满足互联网社会解决纠纷的需求，2019年5月28日，广州互联网法院推出无人法院E法亭，提供一个新型智慧司法便民终端（见侧边栏）。E法亭建基于5G网络，可确保超高清音视频传输。E法亭集成可控云终端，可对当事人行为进行全程录音、录像和录屏，结合“网通法链”认证的第三方存证机构予以存证，确保当事人存证安全规范、可回溯。在E法亭中，当事人或其代理人通过选择案由、填写信息、扫描提交案件材料，可以快速完成网上立案，并可以通过刷身份证、输入查询码、扫描二维码三种方式查询立案信息。为确保相关送达为当事人本人签收，当事人须在登录系统后，选择其名下案件进行电子确认，由系统自动给当事人拍照、作出记录后，才可批量打印领取文书。借助在线纠纷多元化解平台，当事人在预约时间登录后，即可以利用E法亭参加调解活动。借助在线庭审系统，当事人根据操作指引完成申请后，便可参加在线庭审。

自2019年5月28日推出至同年8月26日，E法亭已经在广州互联网法院、广州市司法局、香港国际争议解决及风险管理协会、澳门调解协会等12个地方投放使用，¹¹ 实现自助立案3305件，在线立案率达100%，在线调解纠纷152件，在线送达6671人次，在线庭审31次。

类案批量智审系统

2019年8月10日，广州互联网法院上线类案批量智审系统（见侧边栏），同时发布了《广州互联网法院互联网金融借款、小额借款合同纠纷在线批量化解程序指引（试行）》。该指引是全国首份专门针对互联网金融借款、小额借款合同纠纷的在线程序指引，规定

了此类借款和纠纷的在线批量准入、在线多元化解、在线批量速裁等方面的内容。

类案批量智审系统秉承纠纷预防的理念，结合互联网科技做了六方面的机制创新：

- (1) **确定批量准入标准。**在身份认证、证据资格、送达方式、合规程度、执行模式、贷款标的、风险控制、事先承诺等八个方面明确了批量准入标准。
- (2) **审理规则前置。**将部分审理规则前置置于纠纷准入标准中，在批量准入时，全面审查贷款产品中与当事人权利、义务、责任紧密相关的利息、费用、催收方式、违约责任以及格式条款、个人信息收集等内容，方便后续快速审理。
- (3) **创新审理方式。**利用在线纠纷化解可突破时空限制的优势，实现诉讼环节全程在线批量办理。在保障当事人权利的前提下简化审理程序，采用在线方式引导当事人在法院指定时间内举证质证、充分发表意见。对于能够查明案件事实的案件，经双方当事人同意，可以不再开庭审理。
- (4) **“一站式”非诉解决。**综合利用调解、和解等多种非诉讼的方式将纠纷在一个在线平台内解决，快速实现债权利益。

“自2019年5月28日上线至同年8月26日，E法亭已[...]实现自助立案3305件，[...]在线调解纠纷152件，在线送达6671人次[...]。”

- (5) **运用失联修复技术。**对于无法联系到的当事人，广州互联网法院利用大数据挖掘他们在通信运营商、社交平台、网络购物平台留下的联系方式，取得与他们的联系，作出送达。

(6) **裁判文书智能生成。**借助人工智能技术,采用令状式、要素式、表格式批量制作裁判文书。

法院目前还致力于推进与地方金融监管机构、行业协会、金融机构、存证公司的数据对接工作。

目前,类案批量智审系统可实现与贷款人的存证平台或数据库对接,相关纠纷的数据可一键导入法院系统,实现智能化一键自动批量立案、匹配和审核。自2019年8月10日上线至同年8月26日,类案批量智审系统已经完成四次批量立案,立案数量分别为20件、200件、6700件、7000件,共计13920件案件。广州互联网

结语

广州互联网法院的“四大司法创新”丰富了在线法院的实践,为全球在线法院的发展提供了中国样本,非常值得各界关注。未来,广州互联网法院还将努力推进虚拟互联网法院计划,为虚拟空间在线法院的出现而努力。■

* 此评论的引用是:郭文利博士,中国广州互联网法院的四大司法创新,《中国法律连接》,第6期,第7页(2019年9月),亦见于斯坦福法学院中国指导性案例项目,2019年9月, <http://cgclaw.stanford.edu/zh-hans/commentaries/clc-6-201909-29-guo-wenli>。中文原文由任若雨、朱新玥和熊美英博士编辑。载于本评论中的信息和意见作者对其负责。它们并不一定代表中国指导性案例项目的工作或意见。

¹ 广州互联网法院于2018年9月28日正式挂牌成立,负责管辖广州市辖区内应当由基层人民法院受理的11类互联网案件(见注释2)。见孙航、隋岳、段莉琼,为网络空间治理法治化贡献广州智慧 广州互联网法院挂牌成立,《中国法院网》,2018年9月28日, <https://www.chinacourt.org/article/detail/2018/09/id/3517007.shtml>。

² 这11类涉网纠纷分别为:(1)通过电子商务平台签订或者履行网络购物合同而产生的纠纷;(2)签订、履行行为均在互联网上完成的网络服务合同纠纷;(3)签订、履行行为均在互联网上完成的金融借款合同纠纷、小额借款合同纠纷;(4)在互联网上首次发表作品的著作权或者邻接权权属纠纷;(5)在互联网上侵害在线发表或者传播作品的著作权或者邻接权而产生的纠纷;(6)互联网域名权属、侵权及合同纠纷;(7)在互联网上侵害他人人身权、财产权等民事权益而产生的纠纷;(8)通过电子商务平台购买的产品,因存在产品缺陷,侵害他人人身、财产权益而产生的产品责任纠纷;(9)检察机关提起的互联网公益诉讼案件;(10)因行政机关作出互联网信息服务管理、互联网商品交易及有关服务管理等行政行为而产生的行政纠纷;(11)上级法院指定管辖的其他互联网民事、行政案件。见林晔晗、潘玲娜,广东高院明确广州互联网法院管辖范围,《人民法院报》,2018年9月28日, <https://www.chinacourt.org/article/detail/2018/09/id/3515866.shtml>。

³ “多元并举”是指多种措施同时实施。

⁴ 见五“度”煲出跨境调解“头啖汤”——广州互联网法院创新粤港澳在线解纷工作纪实,《人民法院报》,2019年7月13日, <http://courttapp.chinacourt.org/fabu-xiangqing-170522.html>。

⁵ 用户注册加入平台后,能够浏览平台并使用智能咨询功能,但若有解纷需求,用户需完成实名认证后才能正式进入解纷流程,包括在线调解、在线诉讼等。

⁶ 此处的“生态系统”是指软件平台及其具体应用程序的集合。见AMRIT TIWANA, PLATFORM ECOSYSTEMS: ALIGNING ARCHITECTURE, GOVERNANCE, AND STRATEGY (Morgan Kaufmann Publishers, 2013),第5-6页。亦见阿姆瑞特·蒂瓦纳阿,《平台生态系统——架构策划、治理与策略》(侯贇慧、赵驰译,北京大学出版社,2018),第7页。

⁷ 区块链一般可分为公有链、私有链、联盟链。网通法链属于联盟链,由经过授权允许的节点加入组成,这些节点就称为联盟节点。见什么是节点?, BINANCE ACADEMY, 2019年9月25日, <https://www.binance.vision/zh/blockchain/what-are-nodes>。

⁸ 这八家政法单位是广州市中级法院、广州市检察院、广州市知识产权法院、广州市铁路运输中级法院、广州市司法局、广州仲裁委员会、广州市南方公证处、广州公证处。

⁹ 广州互联网法院颁布了一系列规范性文件,如《司法区块链基础平台技术要求》、《区块链基础平台安全服务要求》等,明确可接入区块链的标准,确保区块链证据的可靠性。此外,广州互联网法院研究出台了《可信电子证据管理平台接入与管理规范(试行)》、《存证平台数据格式规范(试行)》,以确保存证标准统一,为区块链证据的证据资格迅速认定奠定基础。

¹⁰ 另外15家存证方是:上海七印信息科技有限公司、蚂蚁金服服务集团、北京信任度科技有限公司、真相网络科技(北京)有限公司、北京京东世纪贸易有限公司、杭州亦笔科技有限公司、深圳市安洛科技有限公司、北京联合信任技术服务有限公司、中国金融认证中心、百度在线网络技术(北京)有限公司、区块链新科技(广州)有限公司、广州网易计算机系统有限公司、共道网络科技有限公司、浙江数泰科技有限公司、厦门市美亚柏科信息股份有限公司。

¹¹ 其他八个地方分别是:中国电信广州市马路路营业厅、广州市律师协会、广州中伦律师事务所、广州东方律师事务所、广信君达律师事务所、广东海印律师事务所、广东海智律师事务所、香港黄淑荃律师事务所(驻广州代表处)。



Pursuing Legal Certainty under an Uncertain System: How Chinese Lawyers and Judges Use Intellectual Property Guiding Cases*

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Abstract

Intellectual property Guiding Cases (“IP GCs”) have captured much attention because, if applied well, they help Chinese judges ensure the uniform application of intellectual property law. Two years ago, only 10 judgments/rulings showing the use of IP GCs by Chinese lawyers and/or judges were identified by the China Guiding Cases Project. Now, the number of these judgments/rulings has risen to 51. The authors of this article analyze the distributions of these 51 judgments/rulings by year, level of court, geographical region, and other measures, and then closely examine the full texts of these judgments/rulings to see whether Chinese lawyers and judges have shown more competence in using IP GCs. The empirical study reveals that encouraging progress has been made. To further help improve the Guiding Cases System, the authors conclude the article by recommending that Chinese authorities adopt two specific measures.

- GCs, if applied by a court to a similar subsequent case, should only be cited in the court’s judgment or ruling as “a reason for its adjudication”, but not as “the basis of its adjudication”⁵ (i.e., only legislation and judicial interpretations can be the basis for a court’s adjudication).

These instructions have left the Guiding Cases System in an uncertain position. Senior SPC judges have attempted to instill more confidence in GCs by identifying GCs as “*de facto* binding precedents”, but the uncertainty remains.⁶

Very encouragingly, as revealed in a 2018 study of more than 1,000 subsequent cases that explicitly mention GCs, many lawyers and judges in different parts of China have not been deterred by this uncertainty. They have still explored possible ways to use GCs under the uncertain Guiding Cases System to better protect parties’ legal rights and interests. The study concluded that “the preliminary success of GCs seems to have provided fertile ground for the propagation of a case culture in China”⁷

The same 2018 study also noted an interesting observation regarding GCs that address intellectual property (e.g., patents, trademarks, copyrights, rights to new plant varieties), unfair competition, and/or antimonopoly issues (hereinafter collectively referred to as “IP GCs” for the reason that the SPC has broadly categorized all of these cases as “intellectual property Guiding Cases”⁸). Although IP GCs account for a significant portion of all released GCs and cover important areas of law, they have been underused, compared with other GCs. As reported in the study, the China Guiding Cases Project (the “CGCP”) of Stanford Law School could only identify, as of the end of 2017, ten subsequent judgments/rulings (“SJ/Rs”) mentioning these IP GCs explicitly.

To date, 112 GCs have been released by the SPC and 22 of them are IP GCs. Since the 2018 study, the total number of SJ/Rs mentioning IP GCs, as identified by the CGCP through the end of June 2019, has risen rapidly to 51. What trends can be seen from this progress in quantity? Has there also been progress in quality, in the sense that Chinese lawyers and judges have shown more competence in using GCs? To answer these questions, the authors of this article first

Introduction

In 2011, the Supreme People’s Court (the “SPC”) of the People’s Republic of China (“China”) released the first batch of Guiding Cases (“GCs”),¹ taking a historical step to implement a case system which, according to the *Provisions of the Supreme People’s Court Concerning Work on Case Guidance* (the “2010 Provisions”), is aimed at “summariz[ing] adjudication experiences, unify[ing] the application of law, enhanc[ing] adjudication quality, and safeguard[ing] judicial impartiality”²

The SPC has high expectations for GCs. It has emphasized that these cases “have guiding effect on adjudication and enforcement work in courts throughout the country”³. However, because GCs have not been officially recognized as a source of Chinese law, the SPC’s expectations have limits, as reflected in the following two instructions given to all of the courts adjudicating subsequent cases that are similar to GCs:

- courts “should”, instead of “shall”, refer to GCs⁴ (suggesting that the application of GCs in similar subsequent cases is not mandatory); and

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provide an overall analysis of the 51 SJ/Rs by considering their distributions by year, level of court, geographical region, and other measures, and then closely examine these SJ/Rs to discuss how lawyers and judges are using IP GCs. Based on this empirical study, the authors conclude with a few suggestions for the Chinese authorities to consider in their efforts in reforming the Guiding Cases System.

22 IP Guiding Cases

Like other GCs released by the SPC, each of the 22 IP GCs is a summary of a judgment(s) and/or ruling(s) of a representative case selected based on the following criteria:

- The judgment or ruling of the case “ha[s] already come into legal effect”; and
- The case “[is] of widespread concern to society”, “[involves] legal provisions [that] are of relatively general nature”, “[is] of a typical nature”, “[is] difficult, complicated, or of new types”, or a case that the SPC considers to have “guiding effect” for other reasons.⁹

Once a representative case is selected by the SPC to be featured as a GC, the legal rule(s) considered in the case, the facts, the outcomes of legal proceedings, and the reasons for the final judgment/ruling are summarized in the “Related Legal Rule(s)”, “Basic Facts of the Case”, “Results of the Adjudication”, and the “Reasons for the Adjudication” sections of the GC, respectively. General principles upon which the adjudication of the representative case was based are presented by the SPC as (a) short paragraph(s) in the

“Main Points of the Adjudication” section, which all courts in China are expected to refer to when they handle similar subsequent cases. Article 9 of the *Detailed Implementing Rules on the “Provisions of the Supreme People’s Court Concerning Work on Case Guidance”* (“2015 Detailed Implementing Rules”) specifically provides:

Where a case being adjudicated is, in terms of the basic facts and application of law, similar to a Guiding Case released by the Supreme People’s Court, the [deciding] people’s court at any level should refer to the “Main Points of the Adjudication” of that relevant Guiding Case to render its ruling or judgment.

Of the 22 IP GCs released thus far, 21 are civil cases (i.e., GC Nos. 20, 29–30, 45–49, 55, 58, 78–86, 92, 100) and one is criminal (i.e., GC No. 87¹⁰) (see **Appendix 1**). The 22 IP GCs account for nearly 20% of all GCs released thus far (22 are criminal cases, 20 are administrative cases, 66 are civil cases, and four are cases of other types (e.g., maritime, state compensation)) (see **Table 1**). This significant proportion suggests that the SPC has a keen interest in helping Chinese courts achieve uniform application of legal rules in these areas. **Table 2** shows a list of legal rules that have been cited in the 22 IP GCs.

Another indicator showing the SPC’s serious attitude toward IP GCs is that all but two (i.e., GC No. 80 and GC No. 87) of these GCs were selected from cases whose original judgments/rulings were ultimately rendered by

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Types of Guiding Cases	Subtotal
Criminal (GC Nos. 3–4, 11–14, 27–28, 32, 61–63, 70–71, 87*, 93, 97, 102–106)	22
Administrative (GC Nos. 5–6, 21–22, 26, 38–41, 59–60, 69, 76–77, 88–91, 94, 101)	20
Civil (all remaining GCs (including 21 IP GCs, i.e., GC Nos. 20, 29–30, 45–49, 55, 58, 78–86, 92, 100))	66
Others (e.g., Maritime, State Compensation) (GC Nos. 16, 42–44)	4
Total	112

* This is the only criminal IP GC.

Table 1: Four Types of Guiding Cases

a high court or the SPC itself (see **Table 3**). Most cases in China are handled by basic or intermediate courts, the lower two tiers of the country's four-tier court system (see below). Only cases considered to be major and complicated are adjudicated by high courts or the SPC.

51 Subsequent Judgments/Rulings: Overall Analysis

Appendix 2 lists 51 SJ/Rs that mention the IP GCs explicitly (i.e., where the case names are identified in full or in part, or where only the GC Nos. are stated in any part of the full-text judgments or rulings). The search for these judgments/rulings was conducted through June 30, 2019 by the CGCP on the official “China Judgements [sic] Online” website (“中国裁判文书网”; <http://wenshu.court.gov.cn>). In conducting this analysis, the authors found that searching for SJ/Rs was

extremely difficult, due to technical limitations with this website. It is possible that the technical difficulties presented by this website may be a factor in the willingness of legal actors and the parties themselves (whose awareness of SJ/Rs relevant to their own cases will certainly help their lawyers prepare stronger arguments) to search for SJ/Rs.

The following sections analyze these SJ/Rs by looking at their distributions by year, level of court, type of adjudication, and geographical region.

1. Distribution by Year

As discussed above, the SPC has released a significant portion of GCs that are IP GCs, reflecting the SPC's emphasis on the use of GCs in this area of the law.

Legislation Cited	GC No(s).	Number of IP GCs
<i>Anti-Monopoly Law</i>	78, 79	2
<i>Anti-Unfair Competition Law</i>	29, 30, 45, 47, 58	5
<i>Civil Procedure Law</i>	82, 84	2
<i>Contract Law</i>	86	1
<i>Copyright Law</i>	48, 80, 81	3
<i>Criminal Law</i>	87	1
<i>General Principles of the Civil Law</i>	29	1
<i>Implementing Regulation of the Copyright Law</i>	80, 81	2
<i>Patent Law</i>	20, 55, 84, 85	4
<i>Regulation on the Protection of New Plant Varieties</i>	86, 92, 100	3
<i>Regulation on the Protection of Computer Software</i>	48, 49	2
<i>Tort Liability Law</i>	83	1
<i>Trademark Law</i>	46, 58, 82	3

Table 2: Number of IP GCs by Legislation Cited

GC No.	Released in	Type of Case	Original Judgment/Ruling Rendered By
20	2013 Q4	An Invention Patent Infringement Dispute	Supreme People's Court
29	2014 Q2	A Dispute over an Unauthorized Use of Another's Enterprise Name	High People's Court of Tianjin Municipality
30	2014 Q2	A Trademark Infringement and Unfair Competition Dispute	High People's Court of Tianjin Municipality
45	2015 Q2	An Unfair Competition Dispute	High People's Court of Shandong Province
46	2015 Q2	A Trademark Infringement and Unfair Competition Dispute	High People's Court of Shandong Province
47	2015 Q2	An Unfair Competition Dispute	Supreme People's Court
48	2015 Q2	A Computer Software Copyright Infringement Dispute	High People's Court of Shanghai Municipality
49	2015 Q2	A Dispute over Computer Software Copyright Infringement	High People's Court of Jiangsu Province
55	2015 Q4	A Utility Model Patent Infringement Dispute	Supreme People's Court
58	2016 Q2	A Trademark Infringement and Unfair Competition Dispute	High People's Court of Chongqing Municipality
78	2017 Q1	A Dispute over Abusing Dominant Market Positions	Supreme People's Court
79	2017 Q1	A Dispute over Bundled Transactions	Supreme People's Court
80	2017 Q1	A Copyright Infringement Dispute	Intermediate People's Court of Guiyang Municipality, Guizhou Province
81	2017 Q1	A Copyright Infringement Dispute	Supreme People's Court
82	2017 Q1	A Trademark Infringement Dispute	Supreme People's Court
83	2017 Q1	A Dispute over Infringement of an Invention Patent	High People's Court of Zhejiang Province
84	2017 Q1	A Dispute over Infringement of an Invention Patent	Supreme People's Court
85	2017 Q1	A Dispute over Infringement of an Exterior Design Patent	Supreme People's Court
86	2017 Q1	A Dispute over Infringement of Rights to New Plant Varieties	High People's Court of Jiangsu Province
87	2017 Q1	A Case About Counterfeiting a Registered Trademark	Intermediate People's Court of Suqian Municipality, Jiangsu Province
92	2017 Q4	A Dispute over Infringement of Rights to a New Plant Variety	High People's Court of Gansu Province
100	2018 Q4	A Dispute over Infringement of Rights to New Plant Varieties	Supreme People's Court

Table 3: 22 IP GCs

However, the SPC's interest in emphasizing these GCs was largely not reciprocated by lawyers or judges until 2018. That year saw a total of 28 SJ/Rs mention IP GCs (in one judgment, (2018) Yu 04 Min Chu No. 384, both GC No. 46 and GC No. 82 are mentioned) (see **Table 4**). Most of these SJ/Rs mention earlier GCs, such as GC Nos. 20, 29, 30, and 46. This makes sense, as these GCs may, over time, have become better known and legal actors may now be more ready to consider their applicability. In addition, it is likely that a certain amount of time will pass before a judge or a lawyer eventually encounters a case in which the circumstances are similar to a GC.

Among the GCs listed in the table above, GC No. 82,¹¹ a trademark infringement dispute that was ultimately adjudicated by the SPC, is an outlier with respect to how quickly a GC was referenced by a SJ/R after the GC was released. Although this GC was released in the first quarter of 2017 and is thus relatively new compared with other IP GCs, there are already 14 SJ/Rs that mention it. These SJ/Rs were rendered by courts of different levels located in different provinces/provincial-level municipalities,

including Chongqing, Fujian, Guangdong, Henan, Jiangsu, Shanghai, Tianjin, and Zhejiang. In 6 of these 14 SJ/Rs, the courts explained, with some analysis, in the reasoning sections that GC No. 82 was applied, whereas in the other 8 SJ/Rs, the courts did not mention GC No. 82 in the reasoning sections at all, but did record in other sections that either the lawyers argued that the GC should be applicable or that the first-instance court considered the GC.

What accounts for the rapid "popularity" of GC No. 82? Apparently, the answer lies in its Main Points of the Adjudication, which are:

Where a party violates the principle of good faith, adversely affects the legal rights and interests of others, disrupts the fair competition order of the market, maliciously obtains and exercises trademark rights, and claims that others have infringed on his rights, **a people's court should, on the grounds that [these acts] constitute an abuse of rights, decide not to support [the party's] litigation requests** (emphasis added).

GC No.	Released in	No. of SJ/Rs	2015	2016	2017	2018	2019
20	2013 Q4	4				4	
29	2014 Q2	6		1	2	2	1
30	2014 Q2	4			1	2	1
45	2015 Q2	3	1		1	1	
46	2015 Q2	5*		1	1	3*	
47	2015 Q2	3	1		2		
48	2015 Q2	0					
49	2015 Q2	0					
55	2015 Q4	2				2	
58	2016 Q2	2	-	2			
78	2017 Q1	0	-	-			
79	2017 Q1	0	-	-			
80	2017 Q1	2	-	-		2	
81	2017 Q1	0	-	-			
82	2017 Q1	14*	-	-	3	10*	1
83	2017 Q1	3	-	-	2	1	
84	2017 Q1	0	-	-			
85	2017 Q1	2	-	-	1	1	
86	2017 Q1	0	-	-			
87	2017 Q1	2	-	-		1	1
92	2017 Q4	0	-	-			
100	2018 Q4	0	-	-	-		
		52*	2	4	13	29*	4

* One subsequent judgment mentions both GC No. 46 and GC No. 82.

Table 4: Distribution of Subsequent Judgments/Rulings by Year

Level of Court	No. of SJ/Rs
Supreme	1
High	18
Intermediate	20
Basic	8
Special*	4
Total	51

* Intellectual property courts

Table 5: Distribution of Subsequent Judgments/Rulings by Level of Court

The above paragraph essentially gives parties powerful ammunition wrapped in broad language that can be interpreted to one's benefit in many different circumstances. It is, therefore, not surprising that this GC has been cited frequently. It will be interesting to see whether the above paragraph will evolve into a set of more clearly defined and generally applicable legal principles.

Type of Adjudication	No. of SJ/Rs
Second-Instance Civil Judgment	24
First-Instance Civil Judgment	18
Second-Instance Criminal Judgment	1
First-Instance Criminal Judgment	1
Second-Instance Administrative Judgment	1
First-Instance Administrative Judgment	1
Others (including, second-instance civil ruling, retrial civil ruling, retrial civil judgment, retrial administrative ruling)	5
Total	51

Table 6: Distribution of Subsequent Judgments/Rulings by Type of Adjudication

2. Distributions by Level of Court and Type of Adjudication

Table 5 shows that the 51 SJ/Rs were rendered by courts of different levels in China, with most having been rendered

Provinces/ Provincial-Level Municipalities	GDP per capita (yuan)*	No. of IP GCs	No. of SJ/Rs	2015	2016	2017	2018	2019
Beijing (北京)	140,211	0	4	1	1	2		
Shanghai (上海)	134,982	1	3				3	
Tianjin (天津)	120,711	2	2				2	
Jiangsu (江苏)	115,168	3	2			1	1	
Zhejiang (浙江)	98,643	1	5		1	1	3	
Fujian (福建)	91,197	0	2	1		1		
Guangdong (广东)	86,412	0	12			4	6	2
Shandong (山东)	76,267	2	1			1		
Inner Mongolia (内蒙古)	68,302	0	0					
Hubei (湖北)	66,616	0	1				1	
Chongqing (重庆)	65,933	1	3				3	
Shaanxi (陕西)	63,477	0	0					
Liaoning (辽宁)	58,008	0	1					1
Jilin (吉林)	55,611	0	0					
Ningxia (宁夏)	54,094	0	0					
Hunan (湖南)	52,949	0	2				2	
Hainan (海南)	51,955	0	1			1		
Henan (河南)	50,152	0	6		1		5	
Xinjiang (新疆)	49,475	0	0					
Sichuan (四川)	48,883	0	2			2		
Hebei (河北)	47,772	0	0					
Anhui (安徽)	47,712	0	0					
Qinghai (青海)	47,690	0	0					
Jiangxi (江西)	47,434	0	1				1	
Shanxi (山西)	45,328	0	1					1
Tibet (西藏)	43,397	0	0					
Heilongjiang (黑龙江)	43,274	0	1				1	
Guangxi (广西)	41,489	0	0					
Guizhou (贵州)	41,244	1	0					
Yunnan (云南)	37,136	0	0					
Gansu (甘肃)	31,336	1	0					
SPC (最高法)		10	1		1			
TOTAL:		22	51					

*Data from the National Bureau of Statistics of China (<http://data.stats.gov.cn>); compiled by Wikipedia (<http://en.wikipedia.org>)

Table 7: Numbers of IP GCs and Subsequent Judgments/Rulings in Different Provinces/Provincial-Level Municipalities

by high people's courts (i.e., 18 SJ/Rs) and intermediate people's courts (i.e., 20 SJ/Rs). China has a four-tier system of regular courts, namely, the SPC, high people's courts (one in each province/provincial-level municipality), intermediate people's courts (in major cities of each province/provincial-level municipality), and basic people's courts (usually, in districts within cities where intermediate people's courts are located).

The distribution of the SJ/Rs mentioning IP GCs seems to fit with the general trend that intellectual property cases are more frequently handled by high and intermediate people's courts, and less frequently by basic courts, due to the relative complexity of such cases.

In addition, China has special courts, which have jurisdiction to handle specific types of cases, such

No. of SJ/Rs	Subtotal	GC(s) mentioned by parties/lawyers?	GC(s) mentioned by court*?	* Location in relation to “Reasoning” section
14	14	Yes	No	N/A
2	17	Yes	Yes	Inside
10		Yes	Yes	Outside
5		Yes	Yes	Inside AND Outside
16	20	No	Yes	Inside
4		No	Yes	Outside
0		No	Yes	Inside AND Outside
51				

Table 8: Who Mentioned the IP GC(s) in Subsequent Judgments/Rulings

as military, railroad transportation, maritime, and intellectual property cases. Four of the 51 SJ/Rs were rendered by the Beijing Intellectual Property Court and the Guangzhou Intellectual Property Court (see **Table 5**). Each of the two intellectual property courts rendered two SJ/Rs. None of the 51 SJ/Rs was rendered by the Shanghai Intellectual Property Court, the other intellectual property court in the country.¹² Given that these courts are specialized in handling intellectual property cases, they should have more opportunities to encounter cases similar to IP GCs and, in light of this context, four SJ/Rs seems to be a small number.

Table 6 shows that most of the 51 SJ/Rs have taken the form of either first-instance (i.e., 18) or second-instance (i.e., 24) civil judgments. This makes sense, as all except one of the 22 IPs are civil GCs. In fact, three pairs of the 51 SJ/Rs are the first-instance and second-instance judgments/rulings issued in three cases. It is encouraging to see the courts continue to consider cited IP GCs throughout the different stages of a single case.

Two of the 51 SJ/Rs—a first-instance criminal judgment (i.e., (2017) Xiang 0702 Xing Chu No. 646) and a second-instance criminal judgment (i.e., (2019) Liao 07 Xing Zhong No. 13)—mention GC No. 87, the only criminal IP GC. The remaining SJ/Rs consist of other types of decisions, signaling that legal actors have sought to consider IP GCs in different types of adjudication.

3. Distribution by Geographical Region

Table 7 shows a certain pattern of geographic distribution amongst the 51 SJ/Rs, with most of them rendered by courts located in provinces/provincial-level municipalities that are more economically developed (as reflected in higher GDP per capita). This may suggest that economically more developed places have a higher chance of encountering disputes involving legal issues addressed by the 22 IP GCs. This may also suggest that legal actors in these places tend to have better legal skills and awareness and are thus more likely to seek to use IP GCs.

A significant number (i.e., 12) of the 51 SJ/Rs were rendered by courts located in Guangdong over a period of three years from 2017 to 2019. Courts in Henan (i.e., 6 SJ/Rs) and Zhejiang (i.e., 5 SJ/Rs) also rendered more SJ/Rs, compared with other provinces/provincial-level municipalities. Interestingly, in the above-mentioned 2018 study of more than 1,000 SJ/Rs mentioning different GCs, these three provinces were also among the top provinces showing the most interest in considering GCs: Guangdong (191 SJ/Rs), Zhejiang (97 SJ/Rs), and Henan (91 SJ/Rs). Such findings seem to represent a consistent trend of “activism” among these three provinces in making use of GCs. Also, this “activism” does not appear to be related to the number of GCs that have originated from these provinces; for example, Guangdong and Henan have each produced only one GC (neither of which was an IP GC). There may be other driving forces. For example, in the case of Guangdong, could the development of the Guangdong–Hong Kong–Macau Greater Bay Area be a driving force?¹³ This issue is worthy of further research.

51 Subsequent Judgments/Rulings: Close Examination

With respect to how to use GCs in SJ/Rs, Article 11 of the *2015 Detailed Implementing Rules* provides the following instructions to judges:

In the process of handling a case, the personnel handling the case **should inquire about relevant Guiding Cases**. Where a relevant Guiding Case is quoted in the adjudication document, [the personnel] **should, in the part [of the document where they provide] reasons for their adjudication, quote the serial number and the “Main Points of the Adjudication” of the Guiding Case**.

Where a public prosecution organ, a party to a case and his defender, or a litigation agent quotes a Guiding Case as a ground [for the] prosecution (litigation) or defense,

GC No.	Date of Adjudication	Subsequent Judgment/Ruling No.	Adjudicating Court	Who Mentioned GC*
20	2018/8/3	(2018) Yue Min Zhong No. 1194	High People's Court of Guangdong Province	Party(/-ies)/ lawyer(s); Court (other section(s)); Court (reasoning section)
20	2018/8/22	(2018) Yue Min Zhong No. 1197	High People's Court of Guangdong Province	Party(/-ies)/ lawyer(s); Court (other section(s)); Court (reasoning section)
20	2018/11/28	(2018) Yue Min Zhong No. 1196	High People's Court of Guangdong Province	Party(/-ies)/ lawyer(s); Court (other section(s)); Court (reasoning section)
29	2016/9/30	(2016) Jing 0105 Min Chu No. 17233	Chaoyang District People's Court of Beijing Municipality	Court (reasoning section)
29	2018/4/13	(2018) Hu 0115 Min Chu No. 9518	Pudong New District People's Court of Shanghai Municipality	Court (reasoning section)
29	2018/4/19	(2018) Hei Min Zhong No. 206	High People's Court of Heilongjiang Province	Party(/-ies)/ lawyer(s); Court (other section(s)); Court (reasoning section)
29	2019/4/2	(2019) Yue Min Zai No. 53	High People's Court of Guangdong Province	Court (reasoning section)
45	2018/8/24	(2017) Hu 0104 Min Chu No. 18960	Xuhui District People's Court of Shanghai Municipality	Court (reasoning section)
47	2015/11/16	(2015) Quan Min Chu Zi No. 218	Intermediate People's Court of Quanzhou Municipality, Fujian Province	Court (reasoning section)
47	2017/9/28	(2017) Yue 05 Min Chu No. 134	Intermediate People's Court of Shantou Municipality, Guangdong Province	Court (reasoning section)
47	2017/11/15	(2017) Chuan 01 Xing Zhong No. 569	Intermediate People's Court of Chengdu Municipality, Sichuan Province	Court (reasoning section)
80	2018/5/28	(2018) Yue 05 Min Zhong No. 384	Intermediate People's Court of Shantou Municipality, Guangdong Province	Party(/-ies)/ lawyer(s); Court (reasoning section)
80	2018/9/28	(2018) E 01 Min Zhong No. 6430	Intermediate People's Court of Wuhan Municipality, Hubei Province	Court (reasoning section)
82	2017/7/26	(2016) Su 02 Min Chu No. 71	Intermediate People's Court of Wuxi Municipality, Jiangsu Province	Court (reasoning section)
82	2018/5/28	(2018) Jin Min Zhong No. 114	High People's Court of Tianjin Municipality	Court (reasoning section)
82	2018/7/3	(2018) Yu 10 Min Chu No. 57	Intermediate People's Court of Xuchang Municipality, Henan Province	Party(/-ies)/ lawyer(s); Court (reasoning section)
82	2018/9/28	(2017) Su Min Zhong No. 1874	High People's Court of Jiangsu Province	Party(/-ies)/ lawyer(s); Court (other section(s)); Court (reasoning section)
82	2018/11/12	(2018) Jin 01 Min Chu No. 175	No. 1 Intermediate People's Court of Tianjin Municipality	Court (reasoning section)
82	2019/1/17	(2018) Yue 03 Min Zhong No. 21433	Intermediate People's Court of Shenzhen Municipality, Guangdong Province	Court (reasoning section)
83	2017/6/29	(2016) Yue 73 Min Chu No. 428	Guangzhou Intellectual Property Court	Court (reasoning section)
83	2017/7/5	(2017) Lu 01 Min Zhong No. 3439	Intermediate People's Court of Jinan Municipality, Shandong Province	Court (reasoning section)
83	2018/10/8	(2018) Zhe 01 Min Chu No. 879	Intermediate People's Court of Hangzhou Municipality, Zhejiang Province	Court (reasoning section)
87	2019/4/1	(2019) Liao 07 Xing Zhong No. 13	Intermediate People's Court of Jinzhou Municipality, Liaoning Province	Court (reasoning section)

* This column indicates who mentioned GC in the subsequent judgment/ruling:
(1) the party(/-ies) or his/her/their lawyer(s) (marked as "Party(/-ies)/lawyer(s)");
(2) the adjudicating court in the "This Court opined" section (marked as "Court (reasoning section)"); and
(3) the adjudicating court in section(s) of the subsequent judgment/ruling other than the "This Court opined" section (marked as "Court (other section(s))").
If two or more of the above situations happened, they are separated by ";".

Table 9: 23 Subsequent Judgments/Rulings in Which Courts Explicitly Mentioned IP GCs in the Reasoning Sections (identified through June 30, 2019)

the personnel handling the case **should, in [providing] the reasons for the adjudication, respond [as to] whether [they] referred to the Guiding Case [in the course of their adjudication] and explain their reasons [for doing so]** (emphasis added).

A close examination of the full texts of the 51 SJ/Rs helps reveal how lawyers and judges use IP GCs and whether the judges followed the above instructions.

Like other judgments or rulings in China, each of the 51 written SJ/Rs can be broadly divided into three sections: (1)

the section recording parties'/lawyers' arguments; (2) the section recording how the court ascertained the facts and, if applicable, the decision(s) made by the courts(s) in earlier proceedings (e.g., in the first instance and/or in the second instance if a retrial was held afterwards); and (3) the section recording the court's reasoning and final decision.

Table 8 tabulates the authors' analysis of who mentioned the IP GCs in the 51 SJ/Rs. In 14 of the 51 SJ/Rs, IP GCs were mentioned by parties/lawyers, but the deciding courts did not respond at all (see **Table 8, first grey row**).¹⁴ These courts did not follow Article 11 Paragraph 2 of the *2015 Detailed Implementing Rules*, which, as shown above, requires the courts to respond.

In 20 of the 51 SJ/Rs, IP GCs were not mentioned by any party involved in the dispute; nevertheless, the deciding courts mentioned the relevant IP GCs in one of the following two ways:

- (1) outside the reasoning sections (i.e., 4 SJ/Rs) (see **Table 8, second grey row from the bottom**). In these four SJ/Rs, the courts only recorded outside the reasoning sections that the IP GCs were considered by the first-instance courts.¹⁵ The courts provided no further discussion of the IP GCs in the reasoning sections.
- (2) inside the reasoning sections (i.e., 16 SJ/Rs) (see **Table 8, third grey row from the bottom**). In these 16 SJ/Rs, the courts explained, with varying degrees of analysis (little analysis, in many cases), in the reasoning sections why the IP GCs were applicable (for a list of these 16 SJ/Rs, see **Table 9, white rows**). These courts did follow Article 11 Paragraph 1 of the *2015 Detailed Implementing Rules* by "inquir[ing] about relevant Guiding Cases", even though the party did not mention any GC.

In the remaining 17 SJ/Rs, at least one party (or its lawyer) mentioned a GC in its arguments (see **Table 8, white rows**). These 17 SJ/Rs are divided into the following two groups:

- (1) In 10 of these 17 SJ/Rs, the deciding courts mentioned the GCs explicitly outside the "Reasoning" sections of the SJ/Rs, indicating the party's submission of the GC as a piece of evidence. These courts did not follow Article 11 Paragraph 2 of the *2015 Detailed Implementing*

Rules, which requires the courts to explain whether the GC is applicable.¹⁶

- (2) In the other 7 of these 17 SJ/Rs, the courts explained, with some analysis, in the reasoning sections whether or not the IP GCs were applicable (for a list of these 7 SJ/Rs, see **Table 9, grey rows**). These courts did follow Article 11 Paragraph 2 of the *2015 Detailed Implementing Rules*. Further, of these 7 SJ/Rs, five applied the IP GCs, but two (i.e., (2018) Hei Min Zhong No. 206 and (2018) Yue 05 Min Zhong No. 384), explained, with slightly more analysis, why the IP GCs were not applicable.

Conclusion

The significant increase in SJ/Rs mentioning IP GCs clearly signals Chinese lawyers' and judges' growing enthusiasm for the use of these GCs, despite the uncertainty prevailing in the Guiding Cases System. It is encouraging that this commitment to pursuing legal certainty through the application of IP GCs has been increasing over the years, and occurring at different levels of courts, in different types of adjudication, and in different geographical regions.

To further improve the Guiding Cases System, an accumulation of more experience through the extensive use of GCs is necessary. To this end, it would be most desirable to recognize GCs as a source of Chinese law so that more legal actors will feel ready to use them. However, the Chinese authorities may not consider this to be a feasible option in the near future. In light of this constraint, they can still adopt at least two measures to encourage more frequent reference to GCs by Chinese lawyers and judges: (1) upgrade the official "China Judgements [sic] Online" website to facilitate research and identification of relevant cases and (2) encourage judges to apply or distinguish GCs in similar subsequent cases but reassure them that they will not be held accountable for mistakes rooted in different interpretations and analyses of the GCs and related legal rules.

Deng Xiaoping, China's paramount leader during the country's earlier reform days, emphasized the need to "cross the river by feeling the stones". To ensure the success of the Guiding Cases System, more footholds need to be placed to help Chinese legal actors find their paths. ■

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¹ 《最高人民法院关于发布第一批指导性案例的通知》 (*Notice of the Supreme People's Court on the Release of the First Batch of Guiding Cases*), issued on and effective as of Dec. 20, 2011, <http://www.court.gov.cn/shenpan-xiangqing-4213.html>.



- ² 《最高人民法院关于案例指导工作的规定》 (*Provisions of the Supreme People's Court Concerning Work on Case Guidance*), Preamble, passed by the Adjudication Committee of the Supreme People's Court on Nov. 15, 2010, issued on and effective as of Nov. 26, 2010, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Cases Rules, June 12, 2015 Edition, <http://cgc.law.stanford.edu/guiding-cases-rules/20101126-english> (hereinafter "2010 Provisions").
- ³ *Id.*, Article 1.
- ⁴ *Id.*, Article 7.
- ⁵ 《〈最高人民法院关于案例指导工作的规定〉实施细则》 (*Detailed Implementing Rules on the "Provisions of the Supreme People's Court Concerning Work on Case Guidance"*), Article 10, passed by the Adjudication Committee of the Supreme People's Court on Apr. 27, 2015, issued on and effective as of May 13, 2015, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Cases Rules, June 12, 2015 Edition, <http://cgc.law.stanford.edu/guiding-cases-rules/20150513-english>.
- ⁶ See, e.g., Judge GUO Feng, *On the Issue of the Application of the Supreme Court's Guiding Cases*, 1 CHINA LAW CONNECT 19, 21 (June 2018), also available at STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, June 2018, <http://cgc.law.stanford.edu/commentaries/clc-1-201806-23-guo-feng>.
- ⁷ Dr. Mei Gechlik, Li Huang, & Jennifer Ingram, *Propagation of a Case Culture in China and Potentially Beyond*, 2 CHINA LAW CONNECT 1 (Sept. 2018), also available at STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, Sept. 2018, <http://cgc.law.stanford.edu/commentaries/clc-2-201809-24-gechlik-huang-ingram>.
- ⁸ See, e.g., 刘瑞红 (LIU Ruihong), 最高法通报第16批指导性案例全部涉知识产权 (*The SPC Sends a Notice about the 16th Batch of Guiding Cases; All Involve Intellectual Property Rights*), 《中国法院网》 (WWW.CHINACOURT.ORG), Mar. 9, 2017, <https://www.chinacourt.org/article/detail/2017/03/id/2575036.shtml>.
- ⁹ 2010 Provisions, *supra* note 2, Article 2.
- ¹⁰ 《郭明升、郭明锋、孙淑标假冒注册商标案》 (*GUO Mingsheng, GUO Mingfeng, and SUN Shubiao, A Case About Counterfeiting a Registered Trademark*), STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Case (EGC87), May 16, 2018 Edition, <http://cgc.law.stanford.edu/guiding-cases/guiding-case-87>.
- ¹¹ 《王碎永诉深圳歌力思服饰股份有限公司、杭州银泰世纪百货有限公司侵害商标权纠纷案》 (*WANG Suiyong v. Shenzhen Ellassay Fashion Co., Ltd. and Hangzhou Intime Century Department Store Co., Ltd., A Trademark Infringement Dispute*), STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Case (EGC82), Sept. 14, 2018 Edition, <http://cgc.law.stanford.edu/guiding-cases/guiding-case-82>.
- ¹² 《全国人大常委会关于在北京、上海、广州设立知识产权法院的决定》 (*Decision of the Standing Committee of the National People's Congress on the Establishment of Intellectual Property Courts in Beijing, Shanghai, and Guangzhou*), passed on, issued on, and effective as of Aug. 31, 2014, http://www.npc.gov.cn/npc/xinwen/2014-09/01/content_1877042.htm.
- ¹³ For more information about the development of this area, see information posted on this website, <https://www.bayarea.gov.hk/en/outline/plan.html>.
- ¹⁴ (2015) Jiao Min Lao Zhong Zi No. 00533, (2016) Zhe Xing Shen No. 103, (2016) Zui Gao Fa Min Shen No. 2903, (2016) Zhe Xing Shen No. 221, (2017) Qiong 97 Xing Chu No. 177, (2017) Yue 73 Min Zhong No. 353, (2017) Yu 01 Min Chu No. 4908, (2017) Yu 01 Min Chu No. 4905, (2017) Xiang 0702 Xing Chu No. 646, (2018) Yu Min Zhong No. 65, (2018) Yu Min Zhong No. 65 Zhi Yi, (2018) Hu 0115 Min Chu No. 28204, (2018) Gan Min Zhong No. 471, and (2019) Jin Min Zhong No. 78.
- ¹⁵ (2017) Jing 73 Min Zhong No. 734, (2018) Yu Min Zhong No. 1166, (2018) Yue Min Zhong No. 166, and (2018) Zhe Min Zhong No. 1069.
- ¹⁶ (2015) Yi Zhong Min Zhong Zi No. 05826, (2016) Yue 0604 Min Chu No. 13131, (2017) Chuan Min Zhong No. 743, (2017) Jing 73 Min Zhong No. 1803, (2017) Min 0582 Min Chu No. 4139, (2017) Yue 0604 Min Chu No. 11948, (2017) Zhe 01 Min Chu No. 867, (2018) Yu 01 Min Zhong No. 2179, (2018) Xiang Min Zhong No. 364, and (2018) Yu 04 Min Chu No. 384.

Appendix 1: 22 IP GCs and Corresponding Numbers of Subsequent Judgments/Rulings (identified through June 30, 2019)

GC No.	Case Name (translated by the CGCP)	Number of SJ/Rs (identified through June 30, 2019)
20	<i>Shenzhen Siruiman Fine Chemicals Co., Ltd. v. Shenzhen Kengzi Water Supply Co., Ltd. and Shenzhen Kangtailan Water Treatment Equipment Co., Ltd., An Invention Patent Infringement Dispute</i>	4
29	<i>Tianjin China Youth Travel Service v. Tianjin Guoqing International Travel Agency, A Dispute over an Unauthorized Use of Another's Enterprise Name</i>	6
30	<i>LAN Jianjun and Hangzhou Suremoov Automotive Technology Company Limited v. Tianjin Xiaomuzhi Automobile Maintenance and Repair Services Co., Ltd. et al., A Trademark Infringement and Unfair Competition Dispute</i>	4
45	<i>Beijing Baidu Netcom Science and Technology Co., Ltd. v. Qingdao Aoshang Network Technology Co., Ltd., An Unfair Competition Dispute</i>	3
46	<i>Shandong Lu Jin Industrial Co., Ltd. v. Juancheng Lu Jin Crafts Co., Ltd. and Jining Lizhibang Home Textiles Co., Ltd., A Trademark Infringement and Unfair Competition Dispute</i>	5*
47	<i>Ferrero International S.A. in Italy v. Montresor (Zhangjiagang) Food Co., Ltd. and Zhengyuan Marketing Co., Ltd. in Tianjin Economic - Technological Development Area, An Unfair Competition Dispute</i>	3
48	<i>Beijing Jingdiao Co., Ltd. v. Shanghai Naikai Electronic Science and Technology Co., Ltd., A Computer Software Copyright Infringement Dispute</i>	0
49	<i>SHI Honglin v. Taizhou Huaren Electronic Information Co., Ltd., A Dispute over Computer Software Copyright Infringement</i>	0
55	<i>BAI Wanqing v. Chengdu Hard-To-Find Items Marketing Services Center et al., A Utility Model Patent Infringement Dispute</i>	2
58	<i>Chengdu Tongdefu Hechuan Peach Piece Co., Ltd. v. Chongqing Hechuan Tongdefu Sliced-Walnut Cake Co., Ltd. and YU Xiaohua, A Trademark Infringement and Unfair Competition Dispute</i>	2
78	<i>Beijing Qihu Technology Co., Ltd. v. Tencent Technology (Shenzhen) Company Limited and Shenzhen Tencent Computer Systems Company Limited, A Dispute over Abusing Dominant Market Positions</i>	0
79	<i>WU Xiaoqin v. Shaanxi Broadcast & TV Network Intermediary (Group) Co., Ltd., A Dispute over a Bundled Transaction</i>	0
80	<i>HONG Fuyuan and DENG Chunxiang v. Guizhou Wufufang Foods Co., Ltd. and Guizhou Jincai Ethnic Culture R & D Co., Ltd., A Copyright Infringement Dispute</i>	2
81	<i>ZHANG Xiaoyan v. LEI Xianhe, ZHAO Qi, and Shandong Aishuren Audio-Video & Book Co., Ltd., A Copyright Infringement Dispute</i>	0
82	<i>WANG Suiyong v. Shenzhen Ellassay Fashion Co., Ltd. and Hangzhou Intime Century Department Store Co., Ltd., A Trademark Infringement Dispute</i>	14*
83	<i>Weihai Jiayikao Household Appliance Co., Ltd. v. Yongkangshi Jinshide Industry & Trading Co., Ltd. and Zhejiang Tmall.com Network Co., Ltd., A Dispute over Infringement of an Invention Patent</i>	3
84	<i>Lilly Company v. WATSON Pharmaceuticals (Changzhou) Co., Ltd., A Dispute over Infringement of an Invention Patent</i>	0
85	<i>Grohe AG v. Zhejiang Jianlong Sanitary Ware Co., Ltd., A Dispute over Infringement of an Exterior Design Patent</i>	2
86	<i>Tianjin Tianlong Seeds Science and Technology Co., Ltd. and Jiangsu Xunong Seeds Science and Technology Co., Ltd., A Dispute over Infringement of Rights to New Plant Varieties</i>	0
87	<i>GUO Mingsheng, GUO Mingfeng, and SUN Shubiao, A Case About Counterfeiting a Registered Trademark</i>	2
92	<i>Laizhou Jimhai Seeds Co., Ltd. v. Zhangye Fukai Agricultural Science and Technology Limited Liability Company, A Dispute over Infringement of Rights to a New Plant Variety</i>	0
100	<i>Shandong Denghai Pioneer Seeds Co., Ltd. v. Shaanxi Nongfeng Seed Industry Co., Ltd. and Shanxi Dafeng Seed Industry Co., Ltd., A Dispute over Infringement of Rights to New Plant Varieties</i>	0
		52*

* One subsequent judgment mentions both GC No. 46 and GC No. 82.

Appendix 2: 51 Subsequent Judgments/Rulings Which Explicitly Mention IP GCs (identified through June 30, 2019)

GC No.	Date of Adjudication	Subsequent Judgment/Ruling No.	Link
20	2018/8/3	(2018) Yue Min Zhong No. 1194	http://cgc.law.stanford.edu/judgments/guangdong-2018-yue-min-zhong-1194-civil-judgment
20	2018/8/22	(2018) Yue Min Zhong No. 1197	http://cgc.law.stanford.edu/judgments/guangdong-2018-yue-min-zhong-1197-civil-judgment
20	2018/11/28	(2018) Yue Min Zhong No. 1196	http://cgc.law.stanford.edu/judgments/guangdong-2018-yue-min-zhong-1196-civil-judgment
20	2018/12/12	(2018) Yue Min Zhong No. 166	http://cgc.law.stanford.edu/judgments/guangdong-2018-yue-min-zhong-166-civil-judgment
29	2016/9/30	(2016) Jing 0105 Min Chu No. 17233	http://cgc.law.stanford.edu/judgments/beijing-2016-jing-0105-min-chu-17233-civil-judgment
29	2017/5/24	(2016) Zhe Xing Shen No. 221	http://cgc.law.stanford.edu/judgments/zhejiang-2016-zhe-xing-shen-221-administrative-ruling
29	2017/6/9	(2017) Jing 73 Min Zhong No. 734	http://cgc.law.stanford.edu/judgments/beijing-2017-jing-73-min-zhong-734-civil-judgment
29	2018/4/13	(2018) Hu 0115 Min Chu No. 9518	http://cgc.law.stanford.edu/judgments/shanghai-2018-hu-0115-min-chu-9518-civil-judgment
29	2018/4/19	(2018) Hei Min Zhong No. 206	http://cgc.law.stanford.edu/judgments/heilongjiang-2018-hei-min-zhong-206-civil-judgment
29	2019/4/2	(2019) Yue Min Zai No. 53	http://cgc.law.stanford.edu/judgments/guangdong-2019-yue-min-zai-53-civil-judgment
30	2017/10/30	(2017) Jing 73 Min Zhong No. 1803	http://cgc.law.stanford.edu/judgments/beijing-2017-jing-73-min-zhong-1803-civil-judgment

GC No.	Date of Adjudication	Subsequent Judgment/Ruling No.	Link
30	2018/1/10	(2017) Yu 01 Min Chu No. 4908	http://cgc.law.stanford.edu/judgments/henan-2017-yu-01-min-chu-4908-civil-judgment
30	2018/1/10	(2017) Yu 01 Min Chu No. 4905	http://cgc.law.stanford.edu/judgments/henan-2017-yu-01-min-chu-4905-civil-judgment
30	2019/4/25	(2019) Jin Min Zhong No. 78	http://cgc.law.stanford.edu/judgments/shanxi-2019-jin-min-zhong-78-civil-judgment
45	2015/9/23	(2015) Yi Zhong Min Zhong Zi No. 05826	http://cgc.law.stanford.edu/judgments/beijing-2015-yi-zhong-min-zhong-zi-05826-civil-judgment
45	2017/10/11	(2017) Yue 73 Min Zhong No. 353	http://cgc.law.stanford.edu/judgments/guangdong-2017-yue-73-min-zhong-353-civil-judgment
45	2018/8/24	(2017) Hu 0104 Min Chu No. 18960	http://cgc.law.stanford.edu/judgments/shanghai-2017-hu-0104-min-chu-18960-civil-judgment
46	2016/9/22	(2016) Zhe Xing Shen No. 103	http://cgc.law.stanford.edu/judgments/zhejiang-2016-zhe-xing-shen-103-administrative-ruling
46	2017/9/6	(2017) Qiong 97 Xing Chu No. 177	http://cgc.law.stanford.edu/judgments/hainan-2017-qiong-97-xing-chu-177-administrative-judgment
46	2018/7/31	(2018) Yu Min Zhong No. 65	http://cgc.law.stanford.edu/judgments/chongqing-2018-yu-min-zhong-65-civil-judgment
46	2018/7/31	(2018) Yu Min Zhong No. 65 Zhi Yi	http://cgc.law.stanford.edu/judgments/chongqing-2018-yu-min-zhong-65-zhi-yi-civil-ruling
46 and 82	2018/12/24	(2018) Yu 04 Min Chu No. 384	http://cgc.law.stanford.edu/judgments/henan-2018-yu-04-min-chu-384-civil-judgment
47	2015/11/16	(2015) Quan Min Chu Zi No. 218	http://cgc.law.stanford.edu/judgments/fujian-2015-quan-min-chu-zi-218-civil-judgment
47	2017/9/28	(2017) Yue 05 Min Chu No. 134	http://cgc.law.stanford.edu/judgments/guangdong-2017-yue-05-min-chu-134-civil-judgment
47	2017/11/15	(2017) Chuan 01 Xing Zhong No. 569	http://cgc.law.stanford.edu/judgments/sichuan-2017-chuan-01-xing-zhong-569-administrative-judgment
55	2018/9/20	(2018) Xiang Min Zhong No. 364	http://cgc.law.stanford.edu/judgments/hunan-2018-xiang-min-zhong-364-civil-judgment
55	2018/9/25	(2018) Gan Min Zhong No. 471	http://cgc.law.stanford.edu/judgments/jiangxi-2018-gan-min-zhong-471-civil-judgment
58	2016/1/28	(2015) Jiao Min Lao Zhong Zi No. 00533	http://cgc.law.stanford.edu/judgments/henan-2015-jiao-min-lao-zhong-zi-00533-civil-judgment
58	2016/12/20	(2016) Zui Gao Fa Min Shen No. 2903	http://cgc.law.stanford.edu/judgments/spc-2016-zui-gao-fa-min-shen-2903-civil-ruling
80	2018/5/28	(2018) Yue 05 Min Zhong No. 384	http://cgc.law.stanford.edu/judgments/guangdong-2018-yue-05-min-zhong-384-civil-judgment
80	2018/9/28	(2018) E 01 Min Zhong No. 6430	http://cgc.law.stanford.edu/judgments/hubei-2018-e-01-min-zhong-6430-civil-judgment
82	2017/7/26	(2016) Su 02 Min Chu No. 71	http://cgc.law.stanford.edu/judgments/jiangsu-2016-su-02-min-chu-71-civil-judgment
82	2017/8/21	(2016) Yue 0604 Min Chu No. 13131	http://cgc.law.stanford.edu/judgments/guangdong-2016-yue-0604-min-chu-13131-civil-judgment
82	2017/11/29	(2017) Min 0582 Min Chu No. 4139	http://cgc.law.stanford.edu/judgments/fujian-2017-min-0582-min-chu-4139-civil-judgment
82	2018/1/31	(2017) Yue 0604 Min Chu No. 11948	http://cgc.law.stanford.edu/judgments/guangdong-2017-yue-0604-min-chu-11948-civil-judgment
82	2018/5/28	(2018) Jin Min Zhong No. 114	http://cgc.law.stanford.edu/judgments/tianjin-2018-jin-min-zhong-114-civil-judgment
82	2018/7/3	(2018) Yu 10 Min Chu No. 57	http://cgc.law.stanford.edu/judgments/henan-2018-yu-10-min-chu-57-civil-judgment
82	2018/8/23	(2017) Zhe 01 Min Chu No. 867	http://cgc.law.stanford.edu/judgments/zhejiang-2017-zhe-01-min-chu-867-civil-judgment
82	2018/9/4	(2018) Hu 0115 Min Chu No. 28204	http://cgc.law.stanford.edu/judgments/shanghai-2018-hu-0115-min-chu-28204-civil-judgment
82	2018/9/5	(2018) Yu Min Zhong No. 1166	http://cgc.law.stanford.edu/judgments/henan-2018-yu-min-zhong-1166-civil-judgment
82	2018/9/10	(2018) Yu 01 Min Zhong No. 2179	http://cgc.law.stanford.edu/judgments/chongqing-2018-yu-01-min-zhong-2179-civil-judgment
82	2018/9/28	(2017) Su Min Zhong No. 1874	http://cgc.law.stanford.edu/judgments/jiangsu-2017-su-min-zhong-1874-civil-judgment
82	2018/11/12	(2018) Jin 01 Min Chu No. 175	http://cgc.law.stanford.edu/judgments/tianjin-2018-jin-01-min-chu-175-civil-judgment
82	2019/1/17	(2018) Yue 03 Min Zhong No. 21433	http://cgc.law.stanford.edu/judgments/guangdong-2018-yue-03-min-zhong-21433-civil-judgment
83	2017/6/29	(2016) Yue 73 Min Chu No. 428	http://cgc.law.stanford.edu/judgments/guangdong-2016-yue-73-min-chu-428
83	2017/7/5	(2017) Lu 01 Min Zhong No. 3439	http://cgc.law.stanford.edu/judgments/shandong-2017-lu-01-min-zhong-3439-civil-judgment
83	2018/10/8	(2018) Zhe 01 Min Chu No. 879	http://cgc.law.stanford.edu/judgments/zhejiang-2018-zhe-01-min-chu-879-civil-judgment
85	2017/9/5	(2017) Chuan Min Zhong No. 743	http://cgc.law.stanford.edu/judgments/sichuan-2017-chuan-min-zhong-743-civil-judgment
85	2018/12/29	(2018) Zhe Min Zhong No. 1069	http://cgc.law.stanford.edu/judgments/zhejiang-2018-zhe-min-zhong-1069-civil-judgment
87	2018/3/27	(2017) Xiang 0702 Xing Chu No. 646	http://cgc.law.stanford.edu/judgments/hunan-2017-xiang-0702-xing-chu-646-criminal-judgment
87	2019/4/1	(2019) Liao 07 Xing Zhong No. 13	http://cgc.law.stanford.edu/judgments/liaoning-2019-liao-07-xing-zhong-13-criminal-judgment

在不确定制度下追求法律确定性： 中国律师和法官如何使用知识产权指导性案例*

熊美英博士

中国指导性案例项目创办人与总监

赵炜

中国指导性案例项目助理执行编辑

摘要

知识产权指导性案例一直备受关注。究其原因是一些案例如能运用得当，它们可以帮助中国法官确保知识产权法的统一适用。两年前，斯坦福法学院中国指导性案例项目仅确定了10个展示中国律师和/或法官使用知识产权指导性案例的裁判。现在，这些裁判的数目已经增加到51个。本文作者分析了这51个裁判的年份、法院级别和地理区域等的分布，并且仔细研究这些裁判的全文，以了解中国律师和法官是否已经更有能力使用知识产权指导性案例。这项实证研究揭示了令人鼓舞的进展。为了进一步帮助完善指导性案例制度，作者在文章结论部分建议中国政府采取两项具体措施。

令人鼓舞的是，正如2018年对1000多个明确提及指导性案例的后续案件的研究所揭示的那样，中国不同地区的许多律师和法官并没有因为这种不确定性而却步。他们仍然不断探索在不确定的指导性案例制度下使用指导性案例的可行方法，以更好地保护当事人的合法权益。该研究得出的结论是“指导性案例的初步成功似乎为中国案例文化的传播提供了肥沃的土壤”。⁷

这项2018年的研究还指出了涉及知识产权（例如专利、商标、版权、植物新品种权）、反不正当竞争法和/或反垄断法的指导性案例（以下统称为“知识产权指导性案例”，这是因为最高法将这些案例都归类为“知识产权指导性案例”⁸）的有趣观点。尽管知识产权指导性案例在所有已发布的指导性案例中占相当大的比例，并涵盖了重要的法律领域，但与其他指导性案例相比，它们未被充分使用。该研究报告指出，斯坦福法学院的中国指导性案例项目（“CGCP”）截至2017年底只能确定十个明确提到知识产权指导性案例的后续裁判。

迄今为止，最高法已经发布了112个指导性案例，其中22个为知识产权指导性案例。自2018年的研究完成后，CGCP截至2019年6月底所确定的明确提到知识产权指导性案例的后续裁判的总数已迅速上升至51个。从数量的增加可以看出什么趋势？在质量方面——中国律师和法官使用指导性案例的能力方面——是否也有所进步？为了回答这些问题，本文作者首先分析这51个后续裁判的年份、法院级别和地理区域等的分布，然后仔细研究这些后续裁判的内容，以讨论律师和法官如何使用知识产权指导性案例。在此实证研究的基础上，作者最后提出了一些建议，供中国当局在改革指导性案例制度时参考。

22个知识产权指导性案例

与最高法发布的其他指导性案例一样，每一个知识产权指导性案例都是具代表性的案例的裁判的摘要，而这些案例是依照以下标准被挑择出来：

- 该案例的裁判“已经发生法律效力”；
- 该案例是“社会广泛关注的”，“法律规定比较原则的”，“具有典型性的”，或是“疑难复杂或者新类型的”的案例，又或是基于其他原因最高法认为其有“指导作用”。⁹

引言

中国最高人民法院（“最高法”）于2011年发布了第一批指导性案例，¹迈出了历史性的一步来实施《最高人民法院关于案例指导工作的规定》所规定的、旨在“总结审判经验，统一法律适用，提高审判质量，维护司法公正”的案例制度。²

最高法对指导性案例有很高的期望。它强调这些案例“对全国法院审判、执行工作具有指导作用”。³但是，由于指导性案例尚未被正式认可为中国法律的渊源，最高法对其的期望有局限性。这反映在以下两个对审判类似指导性案例的后续案件的各级法院所作出的指示：

- 这些法院“应当”而不是“必须”参照指导性案例⁴（意味着指导性案例于类似的后续案件中的适用不是强制性的）；和
- 如果法院在审理类似的后续案件时适用指导性案例，其仅应在判决或裁定中将指导性案例作为“裁判理由”引述，而不应作为“裁判依据”引用⁵（即：只有立法和司法解释可以作为法院的裁判依据）。

这些指示使指导性案例制度处于不确定的位置。最高法资深法官尝试通过将指导性案例确定为“事实上具有约束力的先例”来增加对指导性案例的信心，但是不确定性仍然存在。⁶

熊美英博士**斯坦福法学院中国指导性案例项目创办人与总监**

熊美英博士是斯坦福法学院中国指导性案例项目(“CGCP”)的创办人与总监。曾于香港任终身教授的熊美英博士,于2011年2月创立CGCP。在2007年加入斯坦福法学院教授有关中国法律和商业的课程之前,熊博士于2001至2005年期间担任华盛顿智囊机构卡内基国际和平基金会的研究员,重点关注中国加入世界贸易组织的影响和法律改革。熊博士在英格兰、威尔士和香港均有出庭律师执业资格,同时也是纽约和哥伦比亚特区的律师。她获得宾夕法尼亚大学沃顿商学院金融学工商管理硕士(MBA)和斯坦福法学院法律科学博士(JSD)。



指导性案例的类型	小计
刑事 (指导案例案号:3-4、11-14、27-28、32、61-63、70-71、87*、93、97、102-106)	22
行政 (指导案例案号:5-6、21-22、26、38-41、59-60、69、76-77、88-91、94、101)	20
民事 (其余指导性案例(包括21个知识产权指导性案例,即指导案例案号:20、29-30、45-49、55、58、78-86、92、100))	66
其他 (例如:海事、国家赔偿) (指导案例案号:16、42-44)	4
总数	112

*这是唯一的刑事知识产权指导性案例。

表1:指导性案例的四大类型

一旦最高法将该具代表性的案例选为指导性案例,案例中考虑到的法条、案情、诉讼结果和最终裁定/判决的理由都分别总结归纳在指导性案例的“相关法条”、“基本案情”、“裁判结果”和“裁判理由”的部分。此外,最高法将该具代表性的案例的裁定所依据的一般原则编成短小段落呈现在“裁判要点”部分,而这些原则也是最高法期望中国各法院在处理类似的后续案件时参照的。《〈最高人民法院关于案例指导工作的规定〉实施细则》(“《实施细则》”)第九条特别规定:

各级人民法院正在审理的案件,在基本案情和法律适用方面,与最高人民法院发布

相关法条	指导案例案号	知识产权指导性案例数量
《反垄断法》	78、79	2
《反不正当竞争法》	29、30、45、47、58	5
《民事诉讼法》	82、84	2
《合同法》	86	1
《著作权法》	48、80、81	3
《刑法》	87	1
《民法通则》	29	1
《著作权法实施条例》	80、81	2
《专利法》	20、55、84、85	4
《植物新品种保护条例》	86、92、100	3
《计算机软件保护条例》	48、49	2
《侵权责任法》	83	1
《商标法》	46、58、82	3

表2:知识产权指导性案例和被引用的法条

的指导性案例相类似的,应当参照相关指导性案例的裁判要点作出裁判。

目前已发布的22个知识产权指导性案例中,21个是民事案例(即指导案例案号:20、29-30、45-49、55、58、78-86、92和100)和1个刑事案件(即指导案例87号¹⁰)(见附录1)。迄今为止,已发布的所有知识产权指导性案例占目前已发布的所有指导性案例(22个是刑事案件,20个是行政案例,66个是民事案例和4个其他类型的案例(例如:海事、国家赔偿))将近20%(见表1)。这一大比例意味着最高法对帮助中国法院在知识产权领域统一适用法律规则方面非常热衷。表2列出了22个知识产权指导性案例所引用的法条。

赵炜**斯坦福法学院中国指导性案例项目助理执行编辑**

赵炜是中国昆明的一位民商事执业律师,目前任职于云南格元律师事务所。他对法律社会学和中国指导性案例的发展及其在国外的影响很感兴趣。他2015年毕业于云南大学,获经济法硕士学位。他曾担任昆明市五华区人民法院民一庭副庭长的实习助理,并在2016年至2017年间在云南司法警官职业学院教授民事实体与程序法。



指导案例 案号	发布于	案例类型	作出原裁判的法院
20	2013年第四季	侵害发明专利权纠纷案	最高人民法院
29	2014年第二季	擅自使用他人企业名称纠纷案	天津市高级人民法院
30	2014年第二季	侵害商标权及不正当竞争纠纷案	天津市高级人民法院
45	2015年第二季	不正当竞争纠纷案	山东省高级人民法院
46	2015年第二季	侵害商标权及不正当竞争纠纷案	山东省高级人民法院
47	2015年第二季	不正当竞争纠纷案	最高人民法院
48	2015年第二季	侵害计算机软件著作权纠纷案	上海市高级人民法院
49	2015年第二季	侵害计算机软件著作权纠纷案	江苏省高级人民法院
55	2015年第四季	侵害实用新型专利权纠纷案	最高人民法院
58	2016年第二季	侵害商标权及不正当竞争纠纷案	重庆市高级人民法院
78	2017年第一季	滥用市场支配地位纠纷案	最高人民法院
79	2017年第一季	捆绑交易纠纷案	最高人民法院
80	2017年第一季	著作权侵权纠纷案	贵州省贵阳市中级人民法院
81	2017年第一季	著作权侵权纠纷案	最高人民法院
82	2017年第一季	侵害商标权纠纷案	最高人民法院
83	2017年第一季	侵害发明专利权纠纷案	浙江省高级人民法院
84	2017年第一季	侵害发明专利权纠纷案	最高人民法院
85	2017年第一季	侵害外观设计专利权纠纷案	最高人民法院
86	2017年第一季	侵害植物新品种权纠纷案	江苏省高级人民法院
87	2017年第一季	假冒注册商标案	江苏省宿迁市中级人民法院
92	2017年第四季	侵犯植物新品种权纠纷案	甘肃省高级人民法院
100	2018年第四季	侵害植物新品种权纠纷案	最高人民法院

表3：22个知识产权指导性案例

另一个表明最高法对知识产权指导性案例的认真态度的指标是，除了两个案例外（即指导案例80号和指导案例87号），所有这些案例基于的裁判最终都由高级法院或最高法作出。（见表3）。在中国，大多数案件是由基层法院或中级法院处理的，它们是中国四层法院系统的下两层（请参阅下文）。只有被认为是重大疑难的案件才由高级法院或最高法审判。

51个后续裁判：整体分析

附录2列出了51个明确提及知识产权指导性案例的后续裁判（即在裁判文书的任何部分中提及指导性案例，不论是案例名称的全部或部分被提及，或仅提及指导案例案号）。CGCP在“中国裁判文书网”（<http://wenshu.court.gov.cn>）官方网站上进行这些裁判的搜索，搜索期以2019年6月30日为止。通过这经验，作者发现搜索后续裁判非常困难，这是由于该网站的技术限制。而这些技术性的困难可能会影响到法律行为者和当事人（其对自己案件有关的后续裁判的认识肯定会帮助其律师准备更强而有力的论据）寻求后续裁判的意愿。

以下各节会通过按年份、法院级别、裁判类型和地理区域的分布来分析这些后续裁判。

1. 年份分布

如上所述，最高法已发布了相当多知识产权指导性案例，其占指导性案例很大的一部分，这反映了最高法对在此法律领域中使用指导性案例的重视。直到2018年，最高法对这些指导性案例的重视基本上没有得到律师或法官响应。但是，2018年，共有28个后续裁判提及知识产权指导性案例（其中，（2018）豫04民初384号的判决提及指导案例46号和指导案例82号）（见表4）。这些后续裁判大多数都提到了早期的指导性案例，例如指导案例20、29、30和46号。这是有道理的，因为随着时间的流逝，这些指导性案例可能已广为人知，而法律行为者可能更准备好对其适用性作出考虑。另外，很可能需要经过一定的时间，法官或律师才会遇到情况类似于指导性案例的案件。

在上表列出的指导性案例中，指导案例82号是一个异常，这是针对指导性案例在发布后需要多久才于后续

指导案例号	发布于	后续裁判数量	2015	2016	2017	2018	2019
20	2013年第四季	4				4	
29	2014年第二季	6		1	2	2	1
30	2014年第二季	4			1	2	1
45	2015年第二季	3	1		1	1	
46	2015年第二季	5*		1	1	3*	
47	2015年第二季	3	1		2		
48	2015年第二季	0					
49	2015年第二季	0					
55	2015年第四季	2				2	
58	2016年第二季	2	-	2			
78	2017年第一季	0	-	-			
79	2017年第一季	0	-	-			
80	2017年第一季	2	-	-		2	
81	2017年第一季	0	-	-			
82	2017年第一季	14*	-	-	3	10*	1
83	2017年第一季	3	-	-	2	1	
84	2017年第一季	0	-	-			
85	2017年第一季	2	-	-	1	1	
86	2017年第一季	0	-	-			
87	2017年第一季	2	-	-		1	1
92	2017年第四季	0	-	-			
100	2018年第四季	0	-	-	-		
		52*	2	4	13	29*	4

*一个后续判决提及指导案例46号和指导案例82号。

表4：后续裁判按年份分布

裁判中使用而言。¹¹ 指导案例82号涉及一起最终由最高法审判的侵害商标权纠纷。尽管此指导性案例仅于2017年第一季度发布，因此与其他知识产权指导性案例相比，它是相当新，但已经有14个后续裁判提及它。这些后续裁判是由位于不同省/省级市（包括重庆、福建、广东、河南、江苏、上海、天津和浙江）的不同级别的法院作出的。在这14个后续裁判当中的6个，法院在说理部分作出了一些分析，解释适用指导案例82号的理由。而在其他8个后续裁判中，法院在说理部分并未提及指导案例82号，但在其他部分中记录了律师辩称应该适用该指导性案例或一审法院考虑了该指导性案例。

法院级别	后续裁判数量
最高	1
高级	18
中级	20
基层	8
专门*	4
总数	51

*知识产权法院

表5：后续裁判按法院级别分布

是什么导致指导案例82号的迅速“普及”？显然，答案在于其裁判要点：

当事人违反诚实信用原则，损害他人合法权益，扰乱市场正当竞争秩序，恶意取得、行使商标权并主张他人侵权的，人民法院应当以构成权利滥用为由，判决对其诉讼请求不予支持。（强调后加）

上面的段落从本质上为当事人提供了强大的弹药。这些弹药被广泛的语言包装，可以在许多不同情况下作出对自己有利的解释。因此，毫不奇怪，该指导性案例被频繁引用。有趣的是，以上段落是否会演变为一组定义更明确且普遍适用的法律原则。

2. 法院级别和裁判类型的分布

表5显示了这51个后续裁判是由中国不同级别的法院作出的，其中大多数是由高级人民法院（即18个后续裁判）和中级人民法院（即20个后续裁判）作出的。中国有四级常规法院系统，分别是最高法、高级人民法院（每个省/省级市有一个）、中级人民法院（设于每个省/省级市的主要城市）和基层人民法院（通常在中级人民法院所在城市的地区）。

这些提到知识产权指导性案例的后续裁判的分布似乎符合这样的普遍趋势：由于知识产权案件的相对复杂性，此类案件更多地由高级和中级人民法院处理，而由基层法院处理的较少。

此外，中国设有专门法院，其具有处理特定类型案件的管辖权，例如军事、铁路运输、海事和知识产权案件。51个后续裁判中有4个是由北京知识产权法院和广州知识产权法院作出的（见表5）。这两个知识产权法院各自作出了两个后续裁判。51个后续裁判中，没有一个是上海知识产权法院作出的。该法院是中国另一个知识产权法院。¹² 鉴于这些法院专门处理知识产权案件，因此它们应该有更多的机会遇到类似于知识产权指导性案例的案件，而考虑到这点，四个后续裁判似乎是一个小数目。

裁判类型	后续裁判数量
二审民事判决	24
一审民事判决	18
二审刑事判决	1
一审刑事判决	1
二审行政判决	1
一审行政判决	1
其他 (包括：二审民事裁定、再审民事裁定、 再审民事判决、再审行政裁定)	5
总数	51

表6：后续裁判按裁判类型分布

表6显示，51个后续裁判中，大多数是一审（即18个）或二审（即24个）民事判决。这是有道理的，因为除了一个以外，所有22个知识产权指导性案例均是民事指导性案例。事实上，在51个后续裁判中，共有三对分别为三个案件的一审、二审的裁判文书。令人鼓舞的是，这展示出法院在同一个案件的不同阶段继续考虑了知识产权指导性案例。

51个后续裁判中，有一个一审刑事判决（即（2017）湘0702刑初646号）和一个二审刑事判决（即（2019）辽07刑终13号）。它们都考虑了指导案例87号，该案例是唯一一个刑事知识产权指导性案例。其余的后续裁判有不同类型，这表明了法律行为者已尝试在不同类型的裁决中考虑知识产权指导性案例。

3. 地理区域的分布

表7显示了51个后续裁判的某种地理分布模式，其中大多数由位于经济较发达的省/省级市（反映在人均GDP较高的方面）的法院作出。这可能表明经济上较发达的地方更有可能遇到涉及22个知识产权指导性案例所解决的法律问题的争端。这也可能表明这些地方的法律行为者往往具有更好的法律技能和意识，因此更有可能寻求使用知识产权指导性案例。

51个后续裁判中的很重要一部分（即12个）是由广东省法院从2017年至2019年的三年内作出的。与其他省/省级市相比，河南法院（6个后续裁判）和浙江法院（5个后续裁判）也作出了更多的后续裁判。有趣的是，在上述对1000多个提及不同指导性案例的后续裁判的一项2018年研究中，这三个省也跻身于对使用指导性案例最感兴趣的省份中：广东（191个后续裁判）、浙江（97个后续裁判）和河南（91个后续裁判）。这些发现似乎代表了这三个省在使用指导性案例方面的“积极主义”趋势。这种“积极主义”似乎与源自这些省份的指导性案例的数量无关。例如，广东和河南仅生产了一个指导性案例（都不是知识产权指导性案例）。因此，可能还有

其他驱动力。以广东为例，粤港澳大湾区的发展是其中的推动力吗？¹³ 这个问题值得进一步研究。

51个后续裁判：仔细研究

关于如何在后续裁判中使用指导性案例，《实施细则》第十一条为法官提供了以下指示：

在办理案件过程中，案件承办人员应当查询相关指导性案例。在裁判文书中引述相关指导性案例的，应在裁判理由部分引述指导性案例的编号和裁判要点。

公诉机关、案件当事人及其辩护人、诉讼代理人引述指导性案例作为控（诉）辩理由的，案件承办人员应当在裁判理由中回应是否参照了该指导性案例并说明理由。
(强调后加)

对51个后续裁判的全文进行仔细研究有助于揭示律师和法官到底是如何使用知识产权指导性案例，以及法官是否遵循上述指示。

像中国的其他裁判一样，这51个后续裁判的每一篇文章可以大致分为三个部分：（1）记录当事人/律师的论点的部分；（2）记录法院如何查明事实、法院在较早的程序中（例如一审、二审等）做出的决定的部分；（3）记录法院推理和最终决定的部分。

表8列出了在51个后续裁判中，是谁提到指导性案例。在这些后续裁判中，有14个案件，至少有一方（或其律师）提到了知识产权指导性案例。但审理的法院完全没有回应（见表8，第一个灰色行）。¹⁴ 这些法院没有遵循《实施规则》第十一条第2款；如上所述，这条款要求法院做出回应。

在51个后续裁判中，有20个案件，任何一方都没有提及知识产权指导性案例；尽管如此，处理这些案件的法院用以下的方法提及了相关的知识产权指导性案例：

- （1）在“本院认为”部分外（即4个后续裁判）（见表8，从底部算起的第二个灰色行）。在这四个后续裁判中，法院仅在“本院认为”部分外记录了一审法院考虑过知识产权指导性案例。¹⁵ 法院在“本院认为”内未对知识产权指导性案例作出进一步讨论。
- （2）在“本院认为”部分内（即16个后续裁判）（见表8，从底部算起的第三个灰色行）。在这16个后续裁判中，法院在“本院认为”部分内，以不同程度的分析（在许多案件中，很少分析）来解释适用知识产权指导性案例的原因（关于这16个后续裁判，见表9，白色行）。这些法院遵循了《实施规则》第十一条第1款的规定，“查询相关指导性案例”，尽管当事人未提及任何指导性案例。

省/省级市	人均GDP (元)*	知识产权指导案例数量	后续裁判数量	2015	2016	2017	2018	2019
北京	140,211	0	4	1	1	2		
上海	134,982	1	3				3	
天津	120,711	2	2				2	
江苏	115,168	3	2			1	1	
浙江	98,643	1	5		1	1	3	
福建	91,197	0	2	1		1		
广东	86,412	0	12			4	6	2
山东	76,267	2	1			1		
内蒙古	68,302	0	0					
湖北	66,616	0	1				1	
重庆	65,933	1	3				3	
陕西	63,477	0	0					
辽宁	58,008	0	1					1
吉林	55,611	0	0					
宁夏	54,094	0	0					
湖南	52,949	0	2				2	
海南	51,955	0	1			1		
河南	50,152	0	6		1		5	
新疆	49,475	0	0					
四川	48,883	0	2			2		
河北	47,772	0	0					
安徽	47,712	0	0					
青海	47,690	0	0					
江西	47,434	0	1				1	
山西	45,328	0	1					1
西藏	43,397	0	0					
黑龙江	43,274	0	1				1	
广西	41,489	0	0					
贵州	41,244	1	0					
云南	37,136	0	0					
甘肃	31,336	1	0					
最高法		10	1		1			
总数：		22	51					

*数据来自中国国家统计局 (<http://data.stats.gov.cn>)；由维基百科编制 (<http://en.wikipedia.org>)

表7：知识产权指导性案例和后续裁判在不同省/省级市的数量

后续裁判数量	小计	指导案例由当事人/律师提及?	指导案例由法院*提及?	*法院是在裁判文书哪一部分提及指导案例 (“本院认为”内/外)
14	14	是	不是	不适用
2	17	是	是	内
10		是	是	外
5		是	是	内与外
16	20	不是	是	内
4		不是	是	外
0		不是	是	内与外
51				

表8：谁于后续裁判中提及知识产权指导性案例

指导案例案号	审判日期	后续裁判号	审判法院	谁提及指导性案例*
20	2018/8/3	(2018) 粤民终1194号	广东省高级人民法院	当事人/律师； 法院 (其他部分) ； 法院 (说理部分)
20	2018/8/22	(2018) 粤民终1197号	广东省高级人民法院	当事人/律师； 法院 (其他部分) ； 法院 (说理部分)
20	2018/11/28	(2018) 粤民终1196号	广东省高级人民法院	当事人/律师； 法院 (其他部分) ； 法院 (说理部分)
29	2016/9/30	(2016) 京0105民初17233号	北京市朝阳区人民法院	法院 (说理部分)
29	2018/4/13	(2018) 沪0115民初9518号	上海市浦东新区人民法院	法院 (说理部分)
29	2018/4/19	(2018) 黑民终206号	黑龙江省高级人民法院	当事人/律师； 法院 (其他部分) ； 法院 (说理部分)
29	2019/4/2	(2019) 粤民再53号	广东省高级人民法院	法院 (说理部分)
45	2018/8/24	(2017) 沪0104民初18960号	上海市徐汇区人民法院	法院 (说理部分)
47	2015/11/16	(2015) 泉民初字第218号	福建省泉州市中级人民法院	法院 (说理部分)
47	2017/9/28	(2017) 粤05民初134号	广东省汕头市中级人民法院	法院 (说理部分)
47	2017/11/15	(2017) 川01行终569号	四川省成都市中级人民法院	法院 (说理部分)
80	2018/5/28	(2018) 粤05民终384号	广东省汕头市中级人民法院	当事人/律师； 法院 (说理部分)
80	2018/9/28	(2018) 鄂01民终6430号	湖北省武汉市中级人民法院	法院 (说理部分)
82	2017/7/26	(2016) 苏02民初71号	江苏省无锡市中级人民法院	法院 (说理部分)
82	2018/5/28	(2018) 津民终114号	天津市高级人民法院	法院 (说理部分)
82	2018/7/3	(2018) 豫10民初57号	河南省许昌市中级人民法院	当事人/律师； 法院 (说理部分)
82	2018/9/28	(2017) 苏民终1874号	江苏省高级人民法院	当事人/律师； 法院 (其他部分) ； 法院 (说理部分)
82	2018/11/12	(2018) 津01民初175号	天津市第一中级人民法院	法院 (说理部分)
82	2019/1/17	(2018) 粤03民终21433号	广东省深圳市中级人民法院	法院 (说理部分)
83	2017/6/29	(2016) 粤73民初428号	广州知识产权法院	法院 (说理部分)
83	2017/7/5	(2017) 鲁01民终3439号	山东省济南市中级人民法院	法院 (说理部分)
83	2018/10/8	(2018) 浙01民初879号	浙江省杭州市中级人民法院	法院 (说理部分)
87	2019/4/1	(2019) 辽07刑终13号	辽宁省锦州市中级人民法院	法院 (说理部分)

*本栏显示谁于后续裁判提及指导性案例：

- (1) 当事人 (或其律师) (标记为“当事人/律师”) ；
- (2) 审判法院在“本院认为”部分 (标记为“法院 (说理部分)”) ；
- (3) 审判法院在“本院认为”以外的部分 (标记为“法院 (其他部分)”) 。

如果上述两种或以上情况发生, 则用“;”分隔。

表9：23个法院于说理部分提及知识产权指导性案例的后续裁判 (截至2019年6月30日)

在余下的17个后续裁判中,至少有一方(或其律师)在其论点中提到了指导性案例(见表8,白色行)。这17个后续裁判分为以下两组:

- (1) 其中10个后续裁判,法院于“本院认为”部分外提及指导性案例,表明当事人提交了指导性案例作为证据。这些法院未遵循《实施规则》第十一条第2款的规定,该条要求法院解释指导性案例是否适用。¹⁶
- (2) 另外7个后续裁判,法院于“本院认为”部分内作出一些分析,解释了知识产权指导性案例是否适用(关于这7个后续裁判,见表9,灰色行)。这些法院遵循了《实施规则》第十一条第2款的规定。在这7个后续裁判中,有5个适用了知识产权指导性案例,2个(即(2018)黑民终206号和(2018)粤05民终384号)提供了比较详细的分析,解释为何相关知识产权指导性案例并不适用。

结论

尽管指导性案例制度存在不确定性,但提及知识产权指导性案例的后续裁判的显著增加清楚地表明了中

国改革开放初期的最高领导人邓小平强调要“摸着石头过河”。为了确保指导性案例制度的成功,需要更多的立足点来帮助中国法律行为者找到自己的道路。■

律师和法官对使用这些指导性案例的热情不断提高。令人鼓舞的是,通过使用知识产权指导性案例来追求法律确定性的投入多年来不断地增加,并且这种投入发生在不同级别的法院、不同类型的审判和不同地理区域中。

为了进一步完善指导性案例制度,有必要通过广泛使用指导性案例积累更多经验。为此,最理想的做法是将指导性案例视为中国法律的渊源,以便更多的法律行为者愿意使用它们。但是,中国当局可能不会在不久的将来认为这是可行的选择。鉴于这种限制,他们仍然可以采取至少两项措施,以鼓励中国律师和法官更频繁地参照指导性案例:(1) 升级中国裁判文书的官方网站,以促进研究和确定相关案件;以及(2) 鼓励法官在类似的后续案件中适用或区分指导性案例,但要向他们保证,对那些源于对指导性案例和相关法规的不同解释和分析所引起的错误,他们将不会被要求承担责任。

中国改革开放初期的最高领导人邓小平强调要“摸着石头过河”。为了确保指导性案例制度的成功,需要更多的立足点来帮助中国法律行为者找到自己的道路。■

* 此评论的引用是:熊美英博士、赵炜,在不确定制度下追求法律确定性:中国律师和法官如何使用知识产权指导性案例,《中国法律连接》,第6期,第23页(2019年9月),亦见于斯坦福法学院中国指导性案例项目,2019年9月, <http://cgclaw.stanford.edu/zh-hans/commentaries/clc-6-201909-30-gechlik-zhao>。作者感谢黄鹏和任若雨协助确定本文所分析的后续裁判。英文原文由Nathan Harpainter编辑。本中文版本由作者翻译。载于本评论中的信息和意见作者对其负责。它们并不一定代表中国指导性案例项目的工作或意见。

¹ 《最高人民法院关于发布第一批指导性案例的通知》,2011年12月20日公布,同日起施行, <http://www.court.gov.cn/shenpan-xiangqing-4213.html>。

² 《最高人民法院关于案例指导工作的规定》,序言,2010年11月15日由最高人民法院审判委员会通过,2010年11月26日公布,同日起施行,斯坦福法学院中国指导性案例项目,中文指导性案例规则,2010年11月26日(最终版本), <https://cgclaw.stanford.edu/zh-hans/guiding-cases-rules/20101126-chinese>。

³ 同上,第一条。

⁴ 同上,第七条。

⁵ 《〈最高人民法院关于案例指导工作的规定〉实施细则》,第十条,2015年4月27日由最高人民法院审判委员会通过,2015年5月13日公布,同日起施行,斯坦福法学院中国指导性案例项目,中文指导性案例规则,2015年6月12日(最终版本), <https://cgclaw.stanford.edu/zh-hans/guiding-cases-rules/20150513-chinese>。

⁶ 见,例如,郭锋法官,关于最高法院指导性案例的适用问题,《中国法律连接》,第1期,第23页(2018年6月),亦见于斯坦福法学院中国指导性案例项目,2018年6月, <http://cgclaw.stanford.edu/zh-hans/commentaries/clc-1-201806-23-guo-feng>。

⁷ 熊美英博士、黄鹏、英珍妮,案例文化在中国内外的传播,《中国法律连接》,第2期,第15页(2018年9月),亦见于斯坦福法学院中国指导性案例项目,2018年9月, <http://cgclaw.stanford.edu/zh-hans/commentaries/clc-2-201809-24-gechlik-huang-ingram>。

⁸ 见,例如,刘瑞红,最高法通报第16批指导性案例 全部涉知识产权,《中国法院网》,2017年3月9日, <https://www.chinacourt.org/article/detail/2017/03/id/2575036.shtml>。

⁹ 《最高人民法院关于案例指导工作的规定》,注释2,第二条。

¹⁰ 《郭明升、郭明锋、孙淑标假冒注册商标案》,斯坦福法学院中国指导性案例项目,中文指导性案例(CG87),2017年3月11日(最终版本), <http://cgclaw.stanford.edu/zh-hans/guiding-cases/guiding-case-87>。

¹¹ 《王碎永诉深圳歌力思服饰股份有限公司、杭州银泰世纪百货有限公司侵害商标权纠纷案》,斯坦福法学院中国指导性案例项目,中文指导性案例(CG82),2017年3月11日(最终版本), <https://cgclaw.stanford.edu/zh-hans/guiding-cases/guiding-case-82>。

¹² 《全国人大常委会关于在北京、上海、广州设立知识产权法院的决定》,2014年8月31日通过和公布,同日起施行, http://www.npc.gov.cn/npc/xinwen/2014-09/01/content_1877042.htm。

¹³ 有关粤港澳大湾区发展的更多信息,见发布在此网站上的信息,网址为 <https://www.bayarea.gov.hk/en/outline/plan.html>。

¹⁴ (2015)焦民劳终字第00533号、(2016)浙行申103号、(2016)最高法民申2903号、(2016)浙行申221号、(2017)琼97行初177号、(2017)粤73民终353号、(2017)豫01民初4908号、(2017)豫01民初4905号、(2017)湘0702刑初646号、(2018)渝民终65号、(2018)渝民终65号之一、(2018)沪0115民初28204号、(2018)赣民终471号、(2019)晋民终78号。

¹⁵ (2017)京73民终734号、(2018)豫民终1166号、(2018)粤民终166号、(2018)浙民终1069号。

¹⁶ (2015)一中民终字第05826号、(2016)粤0604民初13131号、(2017)川民终743号、(2017)京73民终1803号、(2017)闽0582民初4139号、(2017)粤0604民初11948号、(2017)浙01民初867号、(2018)渝01民终2179号、(2018)湘民终364号、(2018)豫04民初384号。



附录1：22个知识产权指导性案例与其后续裁判数量（截至2019年6月30日）

指导案例案号	案例名称	后续裁判数量 (截至2019年6月30日)
20	《深圳市斯瑞曼精细化工有限公司诉深圳市坑梓自来水有限公司、深圳市康泰蓝水处理设备有限公司侵害发明专利权纠纷案》	4
29	《天津中国青年旅行社诉天津国青国际旅行社擅自使用他人企业名称纠纷案》	6
30	《兰建军、杭州小拇指汽车维修科技股份有限公司诉天津市小拇指汽车维修服务有限公司等侵害商标权及不正当竞争纠纷案》	4
45	《北京百度网讯科技有限公司诉青岛奥商网络技术有限公司等不正当竞争纠纷案》	3
46	《山东鲁锦实业有限公司诉鄞城县鲁锦工艺品有限责任公司、济宁礼之邦家纺有限公司侵害商标权及不正当竞争纠纷案》	5*
47	《意大利费列罗公司诉蒙特莎（张家港）食品有限公司、天津经济技术开发区正元行销有限公司不正当竞争纠纷案》	3
48	《北京精雕科技有限公司诉上海奈凯电子科技有限公司侵害计算机软件著作权纠纷案》	0
49	《石鸿林诉泰州华仁电子资讯有限公司侵害计算机软件著作权纠纷案》	0
55	《柏万清诉成都难寻物品营销服务中心等侵害实用新型专利权纠纷案》	2
58	《成都同德福合川桃片有限公司诉重庆市合川区同德福桃片有限公司、余晓华侵害商标权及不正当竞争纠纷案》	2
78	《北京奇虎科技有限公司诉腾讯科技（深圳）有限公司、深圳市腾讯计算机系统有限公司滥用市场支配地位纠纷案》	0
79	《吴小泰诉陕西广电网络传媒（集团）股份有限公司捆绑交易纠纷案》	0
80	《洪福远、邓春香诉贵州五福坊食品有限公司、贵州今彩民族文化研发有限公司著作权侵权纠纷案》	2
81	《张晓燕诉雷献和、赵琪、山东爱书人音像图书有限公司著作权侵权纠纷案》	0
82	《王碑永诉深圳歌力思服饰股份有限公司、杭州银泰世纪百货有限公司侵害商标权纠纷案》	14*
83	《威海嘉易烤生活电器有限公司诉永康市金仕德工贸有限公司、浙江天猫网络有限公司侵害发明专利权纠纷案》	3
84	《礼来公司诉常州华生制药有限公司侵害发明专利权纠纷案》	0
85	《高仪股份公司诉浙江健龙卫浴有限公司侵害外观设计专利权纠纷案》	2
86	《天津天隆种业科技有限公司与江苏徐农种业科技有限公司侵害植物新品种权纠纷案》	0
87	《郭明升、郭明锋、孙淑标假冒注册商标案》	2
92	《莱州市金海种业有限公司诉张掖市富凯农业科技有限责任公司侵犯植物新品种权纠纷案》	0
100	《山东登海先锋种业有限公司诉陕西农丰种业有限责任公司、山西大丰种业有限公司侵害植物新品种权纠纷案》	0
		52*

* 一个后续判决提及指导案例46号和指导案例82号。

附录2：51个明确提及知识产权指导性案例的后续裁判（截至2019年6月30日）

指导案例案号	审判日期	后续裁判号	链接
20	2018/8/3	(2018) 粤民终1194号	http://cgclaw.stanford.edu/zh-hans/judgments/guangdong-2018-yue-min-zhong-1194-civil-judgment
20	2018/8/22	(2018) 粤民终1197号	http://cgclaw.stanford.edu/zh-hans/judgments/guangdong-2018-yue-min-zhong-1197-civil-judgment
20	2018/11/28	(2018) 粤民终1196号	http://cgclaw.stanford.edu/zh-hans/judgments/guangdong-2018-yue-min-zhong-1196-civil-judgment
20	2018/12/12	(2018) 粤民终166号	http://cgclaw.stanford.edu/zh-hans/judgments/guangdong-2018-yue-min-zhong-166-civil-judgment
29	2016/9/30	(2016) 京0105民初17233号	http://cgclaw.stanford.edu/zh-hans/judgments/beijing-2016-jing-0105-min-chu-17233-civil-judgment
29	2017/5/24	(2016) 浙行申221号	http://cgclaw.stanford.edu/zh-hans/judgments/zhejiang-2016-zhe-xing-shen-221-administrative-ruling
29	2017/6/9	(2017) 京73民终734号	http://cgclaw.stanford.edu/zh-hans/judgments/beijing-2017-jing-73-min-zhong-734-civil-judgment
29	2018/4/13	(2018) 沪0115民初9518号	http://cgclaw.stanford.edu/zh-hans/judgments/shanghai-2018-hu-0115-min-chu-9518-civil-judgment
29	2018/4/19	(2018) 黑民终206号	http://cgclaw.stanford.edu/zh-hans/judgments/heilongjiang-2018-hei-min-zhong-206-civil-judgment
29	2019/4/2	(2019) 粤民再53号	http://cgclaw.stanford.edu/zh-hans/judgments/guangdong-2019-yue-min-zai-53-civil-judgment
30	2017/10/30	(2017) 京73民终1803号	http://cgclaw.stanford.edu/zh-hans/judgments/beijing-2017-jing-73-min-zhong-1803-civil-judgment
30	2018/1/10	(2017) 豫01民初4908号	http://cgclaw.stanford.edu/zh-hans/judgments/henan-2017-yu-01-min-chu-4908-civil-judgment

指导案例号	审判日期	后续裁判号	链接
30	2018/1/10	(2017)豫01民初4905号	http://cgc.law.stanford.edu/zh-hans/judgments/henan-2017-yu-01-min-chu-4905-civil-judgment
30	2019/4/25	(2019)晋民终78号	http://cgc.law.stanford.edu/zh-hans/judgments/shanxi-2019-jin-min-zhong-78-civil-judgment
45	2015/9/23	(2015)一中民终字第05826号	http://cgc.law.stanford.edu/zh-hans/judgments/beijing-2015-yi-zhong-min-zhong-zi-05826-civil-judgment
45	2017/10/11	(2017)粤73民终353号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2017-yue-73-min-zhong-353-civil-judgment
45	2018/8/24	(2017)沪0104民初18960号	http://cgc.law.stanford.edu/zh-hans/judgments/shanghai-2017-hu-0104-min-chu-18960-civil-judgment
46	2016/9/22	(2016)浙行申103号	http://cgc.law.stanford.edu/zh-hans/judgments/zhejiang-2016-zhe-xing-shen-103-administrative-ruling
46	2017/9/6	(2017)琼97行初177号	http://cgc.law.stanford.edu/zh-hans/judgments/hainan-2017-qiong-97-xing-chu-177-administrative-judgment
46	2018/7/31	(2018)渝民终65号	http://cgc.law.stanford.edu/zh-hans/judgments/chongqing-2018-yu-min-zhong-65-civil-judgment
46	2018/7/31	(2018)渝民终65号之一	http://cgc.law.stanford.edu/zh-hans/judgments/chongqing-2018-yu-min-zhong-65-zhi-yi-civil-ruling
46和82	2018/12/24	(2018)豫04民初384号	http://cgc.law.stanford.edu/zh-hans/judgments/henan-2018-yu-04-min-chu-384-civil-judgment
47	2015/11/16	(2015)泉民初字第218号	http://cgc.law.stanford.edu/zh-hans/judgments/fujian-2015-quan-min-chu-zi-218-civil-judgment
47	2017/9/28	(2017)粤05民初134号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2017-yue-05-min-chu-134-civil-judgment
47	2017/11/15	(2017)川01行终569号	http://cgc.law.stanford.edu/zh-hans/judgments/sichuan-2017-chuan-01-xing-zhong-569-administrative-judgment
55	2018/9/20	(2018)湘民终364号	http://cgc.law.stanford.edu/zh-hans/judgments/hunan-2018-xiang-min-zhong-364-civil-judgment
55	2018/9/25	(2018)赣民终471号	http://cgc.law.stanford.edu/zh-hans/judgments/jiangxi-2018-gan-min-zhong-471-civil-judgment
58	2016/1/28	(2015)焦民劳终字第00533号	http://cgc.law.stanford.edu/zh-hans/judgments/henan-2015-jiao-min-lao-zhong-zi-00533-civil-judgment
58	2016/12/20	(2016)最高法民申2903号	http://cgc.law.stanford.edu/zh-hans/judgments/spc-2016-zui-gao-fa-min-shen-2903-civil-ruling
80	2018/5/28	(2018)粤05民终384号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2018-yue-05-min-zhong-384-civil-judgment
80	2018/9/28	(2018)鄂01民终6430号	http://cgc.law.stanford.edu/zh-hans/judgments/hubei-2018-e-01-min-zhong-6430-civil-judgment
82	2017/7/26	(2016)苏02民初71号	http://cgc.law.stanford.edu/zh-hans/judgments/jiangsu-2016-su-02-min-chu-71-civil-judgment
82	2017/8/21	(2016)粤0604民初13131号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2016-yue-0604-min-chu-13131-civil-judgment
82	2017/11/29	(2017)闽0582民初4139号	http://cgc.law.stanford.edu/zh-hans/judgments/fujian-2017-min-0582-min-chu-4139-civil-judgment
82	2018/1/31	(2017)粤0604民初11948号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2017-yue-0604-min-chu-11948-civil-judgment
82	2018/5/28	(2018)津民终114号	http://cgc.law.stanford.edu/zh-hans/judgments/tianjin-2018-jin-min-zhong-114-civil-judgment
82	2018/7/3	(2018)豫10民初57号	http://cgc.law.stanford.edu/zh-hans/judgments/henan-2018-yu-10-min-chu-57-civil-judgment
82	2018/8/23	(2017)浙01民初867号	http://cgc.law.stanford.edu/zh-hans/judgments/zhejiang-2017-zhe-01-min-chu-867-civil-judgment
82	2018/9/4	(2018)沪0115民初28204号	http://cgc.law.stanford.edu/zh-hans/judgments/shanghai-2018-hu-0115-min-chu-28204-civil-judgment
82	2018/9/5	(2018)豫民终1166号	http://cgc.law.stanford.edu/zh-hans/judgments/henan-2018-yu-min-zhong-1166-civil-judgment
82	2018/9/10	(2018)渝01民终2179号	http://cgc.law.stanford.edu/zh-hans/judgments/chongqing-2018-yu-01-min-zhong-2179-civil-judgment
82	2018/9/28	(2017)苏民终1874号	http://cgc.law.stanford.edu/zh-hans/judgments/jiangsu-2017-su-min-zhong-1874-civil-judgment
82	2018/11/12	(2018)津01民初175号	http://cgc.law.stanford.edu/zh-hans/judgments/tianjin-2018-jin-01-min-chu-175-civil-judgment
82	2019/1/17	(2018)粤03民终21433号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2018-yue-03-min-zhong-21433-civil-judgment
83	2017/6/29	(2016)粤73民初428号	http://cgc.law.stanford.edu/zh-hans/judgments/guangdong-2016-yue-73-min-chu-428
83	2017/7/5	(2017)鲁01民终3439号	http://cgc.law.stanford.edu/zh-hans/judgments/shandong-2017-lu-01-min-zhong-3439-civil-judgment
83	2018/10/8	(2018)浙01民初879号	http://cgc.law.stanford.edu/zh-hans/judgments/zhejiang-2018-zhe-01-min-chu-879-civil-judgment
85	2017/9/5	(2017)川民终743号	http://cgc.law.stanford.edu/zh-hans/judgments/sichuan-2017-chuan-min-zhong-743-civil-judgment
85	2018/12/29	(2018)浙民终1069号	http://cgc.law.stanford.edu/zh-hans/judgments/zhejiang-2018-zhe-min-zhong-1069-civil-judgment
87	2018/3/27	(2017)湘0702刑初646号	http://cgc.law.stanford.edu/zh-hans/judgments/hunan-2017-xiang-0702-xing-chu-646-criminal-judgment
87	2019/4/1	(2019)辽07刑终13号	http://cgc.law.stanford.edu/zh-hans/judgments/liaoning-2019-liao-07-xing-zhong-13-criminal-judgment

CGCP Interview: Ivan Cardillo*

Camila Elyse Katz

Editor, China Guiding Cases Project



"I've been involved with the CGCP since 2014. [...] The project has evolved to play] a key role in promoting harmonization of rules, self-awareness, education, and knowledge, as well as promoting understanding of the social impact of law and understanding of the role played by the judiciary at the national and international levels."

—Ivan Cardillo

• **What first brought you to China? And what has made you stay?**

When I began studying law, I was mainly interested in learning about the law of human society and how just laws are written, specifically how to maintain harmony between humans and nature. Then, my longstanding interest in Chinese philosophy resurfaced and I realized that I needed to take a new approach. In addition to comparing contemporary legal systems, a strong historical awareness is necessary to understand why some civilizations make certain choices but not others. I asked myself, how do civilizations view each other? And can one compare two different cultures without relying on stereotypes and without making moral judgments about what is good and what is bad?

After coming to understand the problem from the Western perspective, I decided to go to China. My purposes were clear: combine the Western and Chinese traditional schools of legal history, develop a new method for comparing modern Chinese and Western legal systems using more historical awareness, and compare the final results of my studies conducted using sinological methods, with a special focus on the translation of related legal works and sources.

When I arrived in China, I was fortunate to meet the right people. I've been accepted by distinguished experts who have been extremely supportive of my research. I also found a position as a law professor at one of the best law schools in China, Zhongnan University of Economics and Law, where I have gained a deeper understanding of the country's legal culture and environment necessary for my work.

When I see myself increasing my expertise and becoming more knowledgeable about Chinese culture, philosophy, history, and law, I am overwhelmed with joy. I feel like I am in the right place, that I am realizing dreams I've had my whole life. This feeling is what makes me stay.

- **You wear many hats, serving in multiple roles that connect China to Italy and, in fact, Europe. For instance, you are the president of the Association of Italian Scholars in China as well as a professor at Zhongnan University of Economics and Law. You also now serve as a visiting professor of Chinese Law at the University of Trento in Italy and one of the coordinators of the university's summer school on "China Studies, Tradition, and Innovation". Can you tell us about your work with the Association of Italian Scholars and its role in cooperation and diplomacy between China and Italy and Europe more generally? And how are you using your roles at Zhongnan University and Trento University to strengthen China-Italy connections?**

International cooperation requires connections between people in order to be successful. General agreements and memoranda of understanding will remain lifeless words on paper if common people are not inspired and curious enough to learn and travel. The Association of Italian Scholars in China takes action at different levels. Locally, we are a community of Italian scholars working in China who share our experiences, organize international seminars, and interact with local colleagues. Internationally, we explain the meaning of Chinese scholarship and share career opportunities and research with Europe. We also try to explain Chinese trends as we see them from our perspectives. We try to attract more foreign scholars to China and facilitate the development of partnerships between Chinese and foreign universities. In addition, we work closely with the Italian Embassy in China, Italian General Consulates in China, the Delegation of the European Union (the "EU") to China, Euraxess Services,¹ other foreign embassies like the German Embassy, and the China-Italy Chamber of Commerce.

The Association of Italian Scholars particularly focuses on understanding Chinese research because this is one of the elements driving China's changes. With this understanding, we can better predict trends in China's economic and international relations. Italy itself has appointed three science and technology counselors to China to expand Italy's understanding of Chinese academic research and trends. This will help boost academic research in strategic areas for the long-term



To view an excerpt of the full interview of Ivan Cardillo, visit the CGCP *Classroom*TM at <https://cgcp.law.stanford.edu/cgcp-classroom-lesson-12>.

Ivan Cardillo
Lecturer in Law
Zhongnan University of Economics and Law

Ivan Cardillo is lecturer in law at Zhongnan University of Economics and Law, where he teaches, in Chinese, courses on Comparative Law, Chinese–Western Comparative Legal Cultures, History of Foreign Law, and Law and Film. Mr. Cardillo is strongly interested in using innovative methods to help his students develop critical thinking skills. For example, in his course titled “Law and Film”, he and his students often discuss legal issues arising from the facts presented in a movie and analyze how the legal issues can be addressed in different legal cultures. Mr. Cardillo’s main research areas include comparative law, comparative legal cultures, the history of Western and Chinese law, legal theory, and law and language. He is a visiting professor of Chinese Law at the University of Trento in Italy, where he also serves as scientific coordinator of the university’s summer school on China Studies, Tradition, and Innovation. He is also a founding member and President of the Association of Italian Scholars in China. In April 2019, Mr. Cardillo received the Xu Guangqi Award, which is awarded by the Italian government every year to recognize outstanding achievements made by Italian scholars doing research in China.

Apart from being an academic, Mr. Cardillo is also Of Counsel at Lehman, Lee & Xu Law Firm, a private Chinese corporate commercial full-service law firm, where he advises international clients doing business in China and Chinese companies seeking to expand their businesses globally. In particular, he advises Italian and Chinese clients on large-scale projects and trade and regulatory matters related to China’s Belt and Road Initiative. He also serves on the Board of Directors of LehmanBush, a boutique private equity advisory firm.

development of the two countries. Members of the Association of Italian Scholars, including myself, are very honored to serve our affiliate institutions and to share the unique insights we have gained from being “insiders” in Chinese society—most members have lived and studied in China for many years and have established strong relations with their counterparts in China. We hope that sharing our experiences with Italian and Chinese institutions will be beneficial for the improvement of scientific cooperation and strategic partnership. At the moment, European scholars in China are fewer in number than Chinese scholars in Europe. I believe that more efforts should be made to offer more working opportunities to other European scholars and to share our living and working experiences in China with them.

With respect to my work with Zhongnan and Trento universities, holding positions at both a Chinese and Italian university allows me to provide my students with unique opportunities. I can easily invite them to my other university for research or study purposes. I’ve organized several conferences and other academic activities, such as the summer school you mention, to facilitate mutual understanding and the sharing of opinions. Many invited experts also work in government, and so conference discussions can often spark ideas for reform. For example, to cover e-commerce law at the summer school, I invited the legal advisor of the official Chinese legislative committee in charge of drafting the Chinese law in this area. We also held meetings with the local office of the General Confederation of Italian Industry, which serves as the Italian employers’ federation and has practical insights that were extremely useful.

I also arranged for two judges of the Supreme People’s Court of China (the “SPC”), who were speakers at the summer school, to visit the Italian Constitutional Court. We had a fruitful discussion on how high-level courts can guide and affect the application of law across the country. We also met with Italy’s Guardia di Finanza (Finance Guard), which is responsible for dealing with financial crimes and smuggling and is the country’s primary agency for suppressing the illegal drug trade.

I try to strengthen China–Italy connections by bringing people, who are not only experts of specific fields but also leading representatives and main actors of economic, legal, and social change, together to exchange ideas. All of the meetings organized are very effective, as they are conducted in a friendly manner and are based on scientific exchange and debates.

- *We understand that you often collaborate with the Istituto per la Cultura Cinese (Institute for Chinese Culture) (<http://istitutoculturacinese.it>), an Italian think tank for the study of Chinese culture encouraged by the Chinese Embassy in Italy and the Italian Senate of the Republic. Can you share some highlights of your experience working with this institute?*

The Istituto per la Cultura Cinese aims at deepening the understanding of China and related issues within the Italian government. The institute and I collaborate to publish articles on several topics and we try to keep the Italian and Chinese governments informed about public opinion. We regularly organize diplomatic missions to both countries, i.e., China and Italy. I took part in a few diplomatic missions



Mr. Cardillo speaks to Chinese journalists and academic colleagues about his translation of President Xi Jinping's speech delivered at the 19th National Congress of the Communist Party of China

in China and I found it very interesting to witness some high-level meetings, specifically how discussions were held, the protocols followed, etc.

During these meetings, I realized the importance of the role of the interpreter. He or she is not a mere translator, but rather has the power to influence the success or failure of the meeting. Verbal discussions are usually colored by certain ways of speaking, specific word usage, and shades of different implied meanings. When people choose words, they usually also want to transmit to the listener an emotion or an attitude, and the interpreter should be able to transmit that too. Having also served as an interpreter, I believe this quality of an interpreter is crucial for advancing understanding between the speaker and the listener.

- *Given your interests and experience, why are you interested in the China Guiding Cases Project (the “CGCP”) of Stanford Law School?*

I've been involved with the CGCP since 2014. Over these years my interest has focused on different facets of the project. At the beginning, the CGCP meant the possibility of studying more in depth the evolution of the Chinese legal system and, as a European scholar, learning how American scholars work and conduct research. Later, as the team kept growing and my understanding of the importance of translation improved, I became more and more involved in this groundbreaking project. The issues we had to face, the further steps taken by the SPC, and finally the Belt and Road Initiative (the “BRI”) made clear that the CGCP is not simply a translation project. Rather, it plays a key role in promoting harmonization of rules, self-awareness, education, and knowledge, as well as promoting understanding of the social impact of law and understanding of the role played by the judiciary at the national and international levels.

- *As you know, one of the main focuses of the CGCP is providing high-quality English translations of the de facto binding cases released by the SPC as part of the country's Case Guidance System. Can you share a little about your experience translating Chinese legal terms and texts into Romance languages? What are the main issues you have encountered?*

As the American legal scholar Harold J. Berman said in his 1964 text, law and language are “effective symbols of community”². When we translate, we need to be aware of this function. I like the translation process so much that, beyond joining the CGCP, I also started a website (www.dirittocinese.com) that is dedicated to Italian translations of certain Chinese law and cultural documents.

My website immediately received attention not only from Italian scholars and institutions but also from Chinese society. The first test came after my translation of President Xi Jinping's remarks at the 19th National Congress of the Communist Party of China held in November 2017. I delivered a lecture in Chinese for journalists, who posed questions and checked my understanding of President Xi's speech. They were afraid of possible misunderstandings and mistakes in my translation. I guess I passed the “exam” and that's why articles supporting my work were finally published. Now, several institutions and press agencies, such as *People's Daily*, *Guangming Daily*, *China Daily*, *Hubei Daily*, *Changjiang Daily*, bulletins published by the Chinese Academy of Social Sciences and the Ministry of Education, as well as China Education News and Hubei Television, have supported and welcomed my work.

It is my belief that when we translate, we must pay attention to both the texts and contexts, especially the intellectual and philosophical beliefs embodied in the words. For example, it is not the same to translate something into English for a native-English-speaking audience as it is to translate something into English for an international audience who occasionally uses English. Furthermore, if we translate an academic paper, we also need to be aware of the relevant literature, the overall narrative, the debates that are not written but usually implied and constitute the background of the paper, and, finally, the target audience.

All of this should be done with little impact on the original text, which is what makes translation hard but also fascinating. It is safe to say that the translator, at the end of his or her work, might know the subject matter of a piece better than the author himself or herself.

- *Guiding Case No. 47 concerned an unfair competition dispute involving the internationally recognized Italian chocolate and confectionery company Ferrero.³ What could Italy and the EU gain from China's development of a Case Guidance System? With Guiding Case No.*

47 in mind, what impact might this system have on business cooperation and general relations between China and Italy or the EU?

Uniform interpretation, application, and enforcement of the law are the foundation for ensuring legal certainty and reliability of a legal system. This predictability helps reduce business risks, which are an important factor considered by business actors in all business projects and operations. Achieving such predictability through court decisions can produce long-lasting impact. Any efforts taken by the Chinese government to improve its intellectual property protection mechanism will be felt extensively; they will generate confidence, mutual trust, and prosperity between China and Italy and the greater EU.

Despite increases in the transparency of the Chinese legal system, criticisms largely based on stereotypes persist, with the language gap being the primary obstacle to understanding and an inadequate appreciation of Chinese legal practices being the second obstacle. The development of the Case Guidance System surely brings with it many benefits at different levels. The way Guiding Cases are structured (e.g., the basic facts, related rules, and main points of the adjudication sections) serves the above-mentioned needs well.

- *I'm sure you've seen the commentary the CGCP published on judicial precedent in the Italian legal system, which discussed whether the country is moving towards a stare decisis model.⁴ What do you think? From your experience, do you see Italy moving in the same direction as China and joining the increasing number of countries that are shifting towards more precedent-based systems?*

I believe that we are, as a community of legal experts, somehow moving further away from a formalistic or legal positivist approach and towards understanding and defining the law in a way that embraces the role of the judge in articulating specific norms to apply in concrete cases.

Legislators, judges, and legal professionals are all products of their time and the society and culture in which they live. It would be unreasonable for them to handle similar cases in a manner completely separate from these influences. Legal rules—their language and life—are based on core principles shared by society and the community as a whole. These core principles may or may not be written, but they are there!

Precedent serves as the interpretation of rules under shared core values of a society. The resulting predictability in how cases are decided is beneficial for social perception of legal certainty and justice. Both Chinese and Western legal traditions have historically recognized judicial precedent as a source of legal culture. Especially in the field of what

today we call civil law, there is also a general recognition of the importance of judicial practice.

Today, as in other historical moments, rules are not produced solely by the State, and often judges are tasked with doing more than simply applying legislation. Therefore, in many countries, the judiciary is required to play a more active role to deal with growing legal pluralism and other complexities.

Today's trend towards a more precedent-based system is, in my opinion, inevitable. It will be interesting to see how the BRI relies on judicial precedent and other precedent-based systems to promote the harmonization of different legal systems.

- *The CGCP's Belt & Road Series looks more closely at cooperation between China and countries around the world under the BRI. How do Italian legal scholars and businesses view the BRI? How do they see Italy's role, especially now that the China-Italy Double Taxation Agreement has been updated?⁵ Do you think the new version of the agreement will encourage bilateral investments and provide fiscal certainty so that the two countries will grow economically closer?*

When we talk about the BRI, our imagination immediately travels back to the ancient Silk Road as described by one of the first people to write about traveling across Eurasia: the Italian Marco Polo.

In modern times, the Italian government, business community, and scholars see the BRI as an important opportunity. Italy will play a key role in the initiative for several reasons: it lies in the heart of Europe and the heart of the Mediterranean Sea, it has a long historical relationship with China, and it is regarded as one of the oldest Western civilizations.

Italy is also a country of high technological and industrial competence as well as innovative ability. Commercial cooperation between China and Italy is worth around USD 49 billion, and Italy is China's third largest European trading partner. Now, as the first G7⁶ country to sign a memorandum of understanding related to the BRI, Italy is promoting a new way of negotiating with China. The memorandum of understanding is unique and promises to become a model for other European countries.⁷

In China, the Embassy of Italy, the Italian Ambassador to China, Ettore Sequi, the Italian Trade Agency, and the China-Italy Chamber of Commerce are doing incredible work to increase the opportunities for Italy related to the BRI. Meanwhile, in Italy, the Italy-China Governmental Committee, Business Forum, Task Force China, and



Mr. Cardillo receives the Xu Guangqi Award at the Italian Embassy in Beijing on Italian Research Day 2019

Cultural Forum have been created to provide an institutional space for meetings and discussions between representatives of the two countries. Specific projects that have already been prioritized by Italy include the “Road to 50”,⁸ a new cooperation agreement between Chinese and Italian customs,⁹ the new train connecting Milan and Chengdu,¹⁰ and reforms of the Italian ports system.¹¹

The Italian press is also increasing people’s awareness and promoting dialogue. A special portal of the Italian Journalist Agency, *AgiChina24*, consistently reports news related to the BRI and other stories related to China.

Regarding the legal issues underlying the BRI’s success—including intellectual property rights protection and dispute resolution—more and more partnerships are being established between Italian and Chinese law firms. In addition, Italian legal scholars have become increasingly interested in studying the Chinese legal system. Personally, I’ve received numerous invitations to give lectures on topics like the fundamentals of the Chinese legal system, legislation, and judicial practice. Conferences, summer

schools, trainings, and master’s programs that focus on China are becoming more and more popular among Italian students. While the Chinese language constitutes a serious barrier to many Italian lawyers, it is also true that English is being used more and more for Chinese law databases and discussions. At the same time, thanks to the more than 700 cooperation agreements that have been signed between Chinese and Italian universities, a new generation of Italian scholars and experts is being groomed to be able to work with China and, therefore, support Italy’s participation in the BRI in the long run.

The updated Double Taxation Agreement brings more benefits with respect to the taxation of dividends, interest, and royalty payments, as well as capital gains. New measures aim to boost investments, facilitate cooperation and recognize Italy’s preferential treatment in comparison to other EU countries (e.g., the lower tax rate on royalties related to the usage of or right to use industrial, commercial, or scientific equipment). Italy and China are both seeking to really deepen bilateral cooperation, with general communication and coordination of the fiscal systems of

the two countries having been raised in the agreement as a means of avoiding double taxation, reducing costs, and facilitating cooperation.

Now it is time for civil society to seize these opportunities and develop people-to-people relationships!¹²

- *Finally, many readers probably have been following the power upheavals and financial and immigration crises that Italy and greater Europe have been facing in recent years. What impact do you think these will have on China-Italy relations going forward? Do you think the financial crises in particular will make it even more necessary for Italy and other countries to participate in the BRI?*

First, let's start with the economy. Europe has been affected by an economic crisis for more than a decade now. Sixty-four percent of the European economy relies on trade between EU member states. Exports outside the bloc constitute 15.6% of the world's total exports, second only to China's exports. The United States, China, and the EU are the three largest global players in international trade. The economic situation of different EU member states differs from one to another: each one has its own ups and downs. Germany is known to be the strongest and the wealthiest country of the EU. Meanwhile, Italy has been called the second greatest industrial power of Europe, with 56% of its exports going to Europe and 61% of its imports coming from the continent.

To fully understand the economy of Italy, like that of every EU member state, one must look at the role it plays at

different levels: in the EU zone itself and in the world as a whole (both as a member of the EU and as a sovereign state). China is an important player and partner at all of these levels. Regarding Italy and China's direct relationship, China is now one of the largest partners of Italy in terms of both imports and exports. As of the end of 2018, the bilateral trade volume had reached USD 48.25 billion, making Italy China's ninth largest export destination and third largest source of imports. Italy has become one of the main destinations for Chinese enterprises' overseas investment in recent years. The scale of investment promises to keep growing under the BRI, but more work should be done to help Italy's small- and medium-sized enterprises get to know and seize opportunities offered by the initiative, especially following Italy's signing of the memorandum of understanding in March of this year.

With respect to politics, Italy has already taken brave and unique steps to develop its relationship with China. It now has the opportunity to become a leader of EU-China trade relations under the BRI framework.

Finally, geographically, Italy is a natural strategic partner for those seeking access to the Mediterranean area, which connects northern Europe with Africa and the East. This unique geographical position is also critical for the immigration crisis, which is a very complex issue that is rooted in European history, the African economy, and world economic trends. To solve this crisis, a truly international economic and cultural approach is needed. I sincerely believe that the BRI, due to its global and diverse aims, can be one of the tools to address this very important and urgent issue. ■

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¹ Euraxess Services is a network of more than 500 service centers located in 40 European countries that help researchers and their families plan and organize their moves to foreign countries.

² HAROLD J. BERMAN, *LAW AND LANGUAGE: EFFECTIVE SYMBOLS OF COMMUNITY* (Cambridge University Press, 1964).

³ 《意大利费列罗公司诉蒙特莎(张家港)食品有限公司、天津经济技术开发区正元行销有限公司不正当竞争纠纷案》(Ferrero International S.A. in Italy v. Montresor (Zhangjiagang) Food Co., Ltd. and Zhengyuan Marketing Co., Ltd. in Tianjin Economic - Technological Development Area, An Unfair Competition Dispute), STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Case (EGC47), Nov. 15, 2015 Edition, <http://cgc.law.stanford.edu/guiding-cases/guiding-case-47>.

⁴ Laura Baccaglini, Gabriella di Paolo, & Fulvio Cortese, *Judicial Precedent in the Italian Legal System: A Shift Toward a Stare Decisis Model?*, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, Apr. 7, 2017, <http://cgc.law.stanford.edu/commentaries/19-baccaglini-di-paolo-cortese>.

⁵ See Dorcas Wang, *China and Italy Sign New Double Taxation Agreement*, CHINA BRIEFING, Apr. 10, 2019, <https://www.china-briefing.com/news/china-italy-dta-updated-2019>.

⁶ The G7 or "Group of Seven" is a group of the seven largest advanced economies, as defined by the International Monetary Fund, and includes Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States.

⁷ For more discussion of this topic, see the interviewee's analysis of the memorandum of understanding. The analysis will be published in another issue of this journal.

⁸ The "Road to 50" is the 2020 celebration marking 50 years since the establishment of China-Italy diplomatic relations.

⁹ *Firmato un Accordo Tra L'Agenzia delle Dogane e dei Monopoli e L'Amministrazione Generale delle Dogane della Repubblica Popolare Cinese per la Cooperazione tra la Direzione Regionale delle Dogane di Venezia, Trieste, Ravenna e il Distretto Doganale di Shanghai*, Agenzia Dogane Monopoli, July 1, 2019, https://www.adm.gov.it/portale/documents/20182/5061418/cre-s-20190702-Cina_ITA.pdf/88f17fb7-2c8d-4948-96f0-87d28ca3c9c4.

¹⁰ *Regular Freight Trains Connect Chengdu, Milan*, XINHUA, Aug. 11, 2018, http://www.xinhuanet.com/english/2018-08/11/c_137383706.htm.

¹¹ *Il nuovo Sistema portuale italiano*, Ministero delle Infrastrutture e dei Trasporti, Jan. 29, 2018, <http://www.mit.gov.it/il-nuovo-sistema-portuale-italiano> (describing the strategic reforms of the new Italian port system aimed at attracting foreign companies).

¹² One of the five major "cooperation priorities" of the BRI is "people-to-people bonds". See Jennifer Ingram, *China Law Connect and Belt & Road Countries*TM, 1 CHINA LAW CONNECT 75 (June 2018), also available at STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, CLC *Spotlight*TM, June 2018, <http://cgc.law.stanford.edu/clc-spotlight/clc-1-201806-bandr-1-jennifer-ingram>.



CGCP 专访：伊万 (Ivan Cardillo)*

Camila Elyse Katz

中国指导性案例项目编辑



“我自2014年以来就一直参与CGCP。[…此项目已经]在促进规则的统一、自我意识、教育和知识，以及提升人们对法律的社会影响的理解和他们对司法机构在国家国际层面所扮演角色的理解上都发挥着关键作用。”

—伊万

• 是什么最先将您带到中国？又是什么让您留在中国？

当我开始学习法律时，我主要对学习人类社会的法律及法律如何编写感兴趣，特别是在如何保持人与自然和谐方面。然后，我对中国哲学的长期兴趣重新浮现，并意识到我需要采取一种新方法。除了比较当代法律制度之外，一种强烈的历史意识是必须的，以理解为什么有些文明做出某些选择而非其它。我问自己，文明之间如何看待彼此？且人们能否在不依靠刻板印象，也不对什么是好和什么是坏做出道德评判的情况下，比较两种不同的文化？

从西方的角度来理解这个问题后，我决定去中国。我的目的明确：结合中西传统的法律史学派，开发一种运用更多历史意识来比较现代中西法律制度的新方法，再比较我用汉学方法作出研究的最终结果，并特别关注相关法律著作和资料的翻译。

当我到了中国，我幸运地遇到了合适的人。我已被著名专家所接受，而他们极其支持我的研究。我还在中国最好的法学院之一的中南财经政法大学担任法学教授。在那里，我对工作所需的中国法律文化和环境获得了更深刻的理解。

当我看到自己日益增长的专业知识及对中国文化、哲学、历史和法律的学识越来越丰富时，我欣喜若狂。我觉得我处于正确的地方，并正在实现我一直以来的梦想。就是这种感受让我留在中国。

• 您身兼数职，担任多个将中国与意大利甚至是欧洲联系起来的角色。比如，您是中国意大利学者协会的主席，也是中南财经政法大学的教授。您现在也是意大利特伦托大学 (University of Trento) 的中国法律访问教授，并是该校暑期学校“中国研究、传统与创新”的协调员之一。您能否更概括地告诉我们，您在意大利学者协会的工作及该协会在中国与意大利和欧洲之间的合作与外交中的作用？此外，您是如何利用您在中南财经政法大学和特伦托大学的角色来加强中意的联系的？

国际合作的成功取决于人与人之间的联系。如果普通人没有受到启发且没有足够的好奇心推动其去学习和旅行，那么一般协议和谅解备忘录将只是纸张上毫无生气的字词。中国意大利学者协会在不同层面上采取行动。在中国本土，我们是一群在华工作的意大利学者，分享我们的经验，组织国际研讨会，并与中国同事互动。在国际上，我们解释中国学术的意义，并与欧洲分享就业机会和研究。我们亦从自己的视角来尝试解释中国的趋势。我们试图吸引更多的外国学者到中国，并促进中外大学之间合作关系的发展。此外，我们与意大利驻华大使馆、意大利驻华总领事馆、欧洲联盟（“欧盟”）驻华代表团、Euraxess Services网络、¹其他外国使馆如德国大使馆，以及中国意大利商会密切合作。

意大利学者协会特别关注对中国研究的认识，因为这是推动中国变化的因素之一。有了这种认识，我们能更好地预测中国经济和国际关系的趋势。意大利自己已任命三名科技顾问前往中国，以扩大意大利对中国学术研究与趋势的了解。这将有助于推动战略领域的学术研究，促进两国长期的发展。意大利学者协会的成员，包括我自己，非常荣幸能为我们的附属机构服务，并分享我们在中国社会中作为“圈内人”所获得的独特见解——大多数成员已在中国生活和学习多年，并与中国同行建立了牢固的关系。我们希望与意大利和中国的机构分享我们的经验，会有利于改善科学合作和战略伙伴关系。目前，在中国的欧洲学者数量少于在欧洲的中国学者。我认为，应做出更多努力，为其他欧洲学者提供更多工作机会，并与他们分享我们在中国的生活和工作经历。

就我在中南财经政法大学及特伦托大学的工作而言，同时在中国和意大利大学任职使我能为学生提供一些独特的机会。我能容易地以研究或学习的目的邀请他们到我的另一所大学。我已组织了几次会议和其他学术活动，比如你提到的暑期学校，以促进相互理解和意见分享。许多受邀的专家也在政府工作，因此会议讨论往往能激发改革想法。例如，为在暑期学校中涵盖电子商务法，我邀请了负责起草该领域的中国法律的中国官方立法委员会的法律顾问。我们还与意大利工业总联合会的当地办事处举行了会议。该联合会是意大利雇主的联合会，其实用见解极为有用。

我还安排两位在暑期学校发言的中国最高人民法院的法官访问意大利宪法法院。我们就高层级法



关于CGCP专访伊万的视频部分内容，请访问 <https://cgc.law.stanford.edu/zh-hans/cgcp-classroom-lesson-12>，观看CGCP 学堂™发布的视频。

伊万 (Ivan Cardillo)

法学讲师

中南财经政法大学

伊万 (Ivan Cardillo) 是中南财经政法大学的法学讲师, 并以中文讲授比较法、中国-西方比较法律文化、外国法史及法律与电影课程。伊万对使用创新方法帮助学生培养批判性思维技能非常感兴趣。例如, 在其“法律与电影”课程中, 他与学生经常讨论电影中呈现的事实所引发的法律问题, 并分析如何在不同法律文化中解决这些法律问题。伊万的主要研究领域包括比较法、比较法律文化、中西法史、法学理论、法律与语言。他是意大利特伦托大学 (University of Trento) 中国法访问教授, 也是该大学“中国研究、传统与创新”暑期学校的科学协调员。他还是中国意大利学者协会的创始成员和主席。2019年4月, 伊万获得“徐光启奖”, 该奖项每年由意大利政府颁发, 以表彰在中国开展研究的意大利学者所取得的杰出成就。

除了是一名学者外, 伊万还是雷曼律师事务所 (Lehman, Lee & Xu Law Firm) 的法律顾问。这是一家提供企业、商业全方位服务的私营中国律师事务所, 而伊万专门为在中国做生意的国际客户和寻求在全球扩张业务的中国公司提供咨询。他特别为意大利和中国客户提供大型项目及与中国“一带一路”倡议相关的贸易和监管方面的建议。他还担任雷曼布什 (LehmanBush) 的董事会成员, 这是一家精品私募股权咨询公司。

院如何指导与影响全国的法律适用的问题进行了富有成果的讨论。我们也会见了意大利金融卫队 (Guardia di Finanza), 其负责处理金融犯罪与走私, 是意大利打击非法毒品交易的主要机构。

我让那些既是特定领域的专家, 亦是经济、法律和社会变革的主要代表和主要行动者共同交流思想, 试图以此方法来加强中意联系。所有组织的会议都非常有效, 因为它们以友好的方式进行, 并以科学交流和辩论为基础。

• **我们知道您常与中国文化研究所 (Istituto per la Cultura Cinese) 合作 (<http://istitutoculturacinese.it>)。**

它是一个获得中国驻意大利大使馆和意大利共和国参议院鼓励而专注于中国文化研究的意大利智库。您能分享您与该机构合作经验的一些亮点吗?

中国文化研究所旨在加深意大利政府内部对中国及相关问题的理解。该研究所与我合作就若干主题发表文章, 且我们试图让意大利和中国政府了解公众意见。我们定期组织外交使团赴中意两国。我参加了在中国的一些外交使团, 见证了一些高级别会议, 特别是如何进行讨论、如何遵循礼节等, 感到非常有趣。

在这些会议期间, 我意识到口译员角色的重要。他或她不仅是一名译者, 而是有能力影响会议的成败的人。口头讨论常由某些说话方式、特定字词用法和各种程度不同的隐含意义来修饰。当人们选择字词时, 他们通常也想向听者传达一种情感或态度, 而口译员也应能传达这些内容。由于我担任过口译员, 我相信口译员的这种素质对增进发言者与听者之间的理解至关重要。

• **基于您的兴趣和经验, 您为何对斯坦福法学院中国指导性案例项目 (“CGCP”) 感兴趣?**

我自2014年以来就一直参与CGCP。这些年来, 我的兴趣集中在该项目的不同方面。最初, CGCP意味着有机会更深入研究中国法律制度的演变, 以及作为一名欧洲学者, 我可以学习美国学者是如何工作和进行研究的。后来, 随着团队不断壮大及我对翻译重要性的理解提高, 我越来越多地参与该开创性项目。一些我们必须面对的问题、最高人民法院采取的进一步措施及“一带一路”倡议等都清楚地表明, CGCP不仅仅是一个翻译项目。相反, 它在促进规则的统一、自我意识、教育和知识, 以及提升人们对法律的社会影响的理解和他们对司法机构在国家国际层面所扮演角色的理解上都发挥着关键作用。

• **如您所知, CGCP的重点之一是提供最高人民法院以中国案例指导制度一部分而发布的、事实上具有约束力的案例的高质量英语翻译版本。您能分享一些将中国法律术语和文本翻译成罗曼语 (Romance languages) 的经历吗? 您遇到的主要问题是什么?**

正如美国法律学者哈罗德·J·伯尔曼 (Harold J. Berman) 在其1964年的著作中所述, 法律和语言是“社区的有效标志”。²当我们翻译时, 需要知道这个功能。我非常喜欢翻译的过程, 除了加入CGCP外, 我还创建了一个网站 (www.dirittochinese.com), 致力于提供某些中国法律与文化的文件的意大利语翻译。

我的网站不仅立刻受到意大利学者和机构的关注, 也受到中国社会的关注。第一次考验发生在我翻译习近平主席在2017年11月举行的中国共产党第十九次全国代表大会上的发言之后。我给记者们作了一次中文演讲, 他们提出问题并考查了我对习主席讲话的理解。他们担心我的翻译可能存在误解和错误。我想我通过了“考试”, 这说明为什么支持我工作的文章最终都出版了。目前, 诸如《人民日报》、《光明日报》、《中国日报》、《湖北日报》和《长江日报》等多家



伊万向中国记者和学术界同仁介绍他对习近平主席在中国共产党第十九次全国代表大会上的讲话的翻译

机构和新闻单位、中国社会科学院和教育部各自发布的公告，以及《中国教育新闻网》与《湖北电视台》等均支持并欢迎我的工作。

我认为，当我们翻译时，我们必须注意文本和语境，尤其是文字所包含的知识与哲学信念。例如，为母语是英语的受众翻译一些内容成为英文，与为偶尔使用英语的国际受众翻译一些内容成为英语，是不一样的。此外，如果翻译一篇学术论文，我们还需要理解相关文献、整体叙述、书面没有明确提及但常被隐含且构成论文背景的争论、目标受众等。

所有这些都应在对原文产生很小影响下完成，这使得翻译既困难也令人着迷。可以肯定地说，译者在其作品完成时，可能比作者本人更了解原作的主题。

- 指导案例47号涉及国际知名的意大利巧克力和糖果公司费列罗的一起不正当竞争纠纷案。³意大利和欧盟能从中国发展案例指导制度中获得什么？考虑到指导案例47号，案例指导制度对中国与意大利或欧盟的商业合作和一般关系可能有何影响？

法律的统一解释、适用与执行是确保法律制度的法律确定性和可靠性的基础。这种可预测性有助于降低业务风险，而这风险是业务参与者在所有业务项目及运营中考虑的重要因素。通过法院判决实现这种可预测性可以产生持久影响。中国政府为改善其知识产权保护机制所做的任何努力都将被广泛地感受到；它们将为中国和意大利及欧盟之间带来信心、互信与繁荣。

尽管中国法律制度的透明度有所提高，但主要基于刻板印象的批评仍然存在，语言差距是理解的主要障碍，而对中国法律实践的不足的认识是另一个障碍。案例指导制度的发展肯定会为此带来不同层面的诸多好处。指导性案例的结构方式（例如，基本案情、相关法条和裁判要点部分）很好地满足了上述需求。

- 我相信您已看到CGCP发表的关于意大利法律制度中司法判例的评论，其讨论了该国是否正走向一个遵循先例的模式。⁴您有何看法？根据您的经验，您是否认为意大利正走向与中国相同的方向，并与越来越多的国家一道，转向更加以案例为基础的法律体系？

我认为，我们这些法律专家正逐步远离形式主义或法律实证主义的方法，并以接受法官在阐明适用于具体案件的具体规范中所起的作用的方式来理解和界定法律。

立法者、法官和法律专业人士都是他们时代及其所生活的社会和文化下的产物。如果他们以完全脱离这些影响的方式来处理类似案件是不合理的。法律规则——他们的语言与生命——是基于社会和整个社区共享的核心原则。这些核心原则可能会也可能不会被写下来，但它们就在那里！

先例是作为对社会共同核心价值下的规则的解释。由此产生的对案件如何裁判的可预测性有利于社会对法律确定性和正义的认知。中国和西方的法律传统在历史上都承认司法先例是法律文化的一个来源。特别是在今天我们称之为民法的领域，人们普遍认识到司法实践的重要性。

今天，与其它历史时刻一样，规则并非仅由国家制定，且法官的任务往往也不仅是适用法律。因此，在许多国家，司法机关被要求发挥更积极的作用，以应对日益增长的法律多元化和其他复杂因素。

在我看来，今天朝着发展更加基于先例的制度的趋势是不可避免的。观察“一带一路”倡议如何依靠司法先例及其他基于先例制度以促进不同法律制度的协调将会是很有趣的。

- CGCP一带一路系列更密切关注中国与世界各国在“一带一路”倡议下的合作。意大利法律学者与企业如何看待“一带一路”倡议？他们如何看待意大利的角色，尤其考虑到现在《中意双重税收协定》已更新？⁵您是否认为该协定的新版本会鼓励双边投资并提供财政确定性，使两国在经济上变得更紧密？

当我们谈及“一带一路”倡议时，我们的想象立刻回溯到最早记叙穿越欧亚大陆旅行的人之一——意大利人马可·波罗——所描述的古丝绸之路。

当下，意大利政府、商界和学者们视“一带一路”倡议为一个重要机遇。意大利将在该倡议中发挥重要作用，原因有几个：意大利处于欧洲的中心，亦是地中海的中心；它与中国有着长久的历史关系且被认为是西方最古老的文明之一。

意大利也是一个技术和工业能力兼创新力很高的国家。中意商业合作共值约490亿美元，且意大利是中



2019年意大利科研日，伊万在意大利驻北京大使馆接受“徐光启奖”

国在欧洲的第三大贸易伙伴。目前，作为首个签署与“一带一路”倡议相关的谅解备忘录的七国集团(G7)国家，⁶意大利正推动与中国谈判的新方式。该谅解备忘录是独一无二的，有望成为其他欧洲国家的示范。⁷

在中国，意大利大使馆、意大利驻华大使Ettore Sequi、意大利贸易局及中国-意大利商会正做着了不起的工作，以增加意大利在“一带一路”倡议方面的机会。同时，意大利-中国政府委员会、商务论坛、中国事务特别工作组及文化论坛已于意大利成立，为两国代表间的会晤和讨论提供了机构层面的空间。已被意大利列为优先事项的具体项目包括“通往50之路”，⁸中意海关新合作协议，⁹连接米兰与成都的新列车，¹⁰以及意大利港口系统的改革。¹¹

意大利媒体也在提高人们的认识和促进对话。意大利记者社的一个特别门户网站AgiChina24一直报道与“一带一路”倡议有关的新闻及其他与中国有关的故事。

针对“一带一路”倡议的成功所依赖的法律问题——包括知识产权保护与争议解决，越来越多的合作关系正在

中国律师事务所与意大利律师事务所之间建立。此外，意大利法律学者对研究中国法律制度越来越感兴趣。我个人已收到许多就中国法律制度基础、立法和司法实践等话题进行讲座的邀请。聚焦中国的会议、暑期学校、培训和硕士项目日益受意大利学生的欢迎。虽然中文对很多意大利律师构成严重障碍，但事实上英语在中国法律数据库和讨论中正被愈来愈多地使用。与此同时，由于中意大学间已签署700多份合作协议，新一代能与中意合作进而长远支持意大利参与“一带一路”倡议的意大利学者和专家正在得到培养。

已被更新的《中意双重税收协定》在股息、利息、特许权使用费及资本利得的征税方面带来了更多好处。新措施旨在激励投资、促进合作和承认意大利相比于其他欧盟国家的优惠待遇（例如，与工业、商业或科学设备的使用或使用权有关的特许权使用费，其税率较低）。意大利与中国都在寻求真正地深化双边合作，协定中已将两国财政体制的总体沟通与协调作为避免双重征税、降低成本及促进合作的手段。

现在是公民社会把握这些机会并发展民间关系的时候了！¹²

- 最后，很多读者可能一直在关注近年来意大利和欧洲所面临的权力动荡及金融与移民危机。您认为这些将对中意关系进展有何影响？您是否认为金融危机将使意大利和其他国家更有必要参与“一带一路”倡议？

首先，让我们从经济开始。十多年来，欧洲一直受到经济危机的影响。欧洲经济的64%依赖于欧盟成员国间的贸易。欧盟对外出口占世界总出口的15.6%，仅次于中国的出口。美国、中国和欧盟是国际贸易的三大全球参与者。不同欧盟成员国的经济形势各不相同、各有起伏。众所周知，德国是欧盟最强大、最富有的国家。与此同时，意大利被称为欧洲第二大工业强国，其出口的56%流向欧洲，进口的61%来自欧洲大陆。

要充分了解意大利的经济，就像了解每个欧盟成员国的经济一样，必须考虑它在不同层面发挥的作用：在欧盟区内本身及在整个世界（既作为欧盟成员国，又作为主权国家）。中国在所有这些层面上都是重要的参与者和伙伴。关于意大利与中国的直接关系，中

国现在是意大利最大的进出口伙伴之一。截至2018年底，双边贸易额已达482.5亿美元，使意大利成为中国第九大出口目的地和第三大进口来源地。近年来，意大利已成为中国企业海外投资的主要目的地之一。在“一带一路”倡议下，投资规模有望继续扩大，但应做更多工作来帮助意大利中小企业了解和掌握该倡议提供的机会。这需要自今年3月份意大利签署谅解备忘录后尤为显著。

在政治方面，意大利已采取勇敢而独特的措施来发展其与中国的关系。它现在有机会成为“一带一路”倡议框架下欧中贸易关系的领导者。

最后，在地理上，意大利是那些寻求进入地中海地区的国家的天然战略伙伴，该地区将北欧与非洲和东方连接起来。这个独特的地理位置对移民危机也至关重要，而这危机是一个根植于欧洲历史、非洲经济和世界经济趋势的非常复杂的问题。解决这危机需要一种真正的国际经济和文化方式。我由衷地相信，由于“一带一路”倡议的全球性与多样化的目标，它能成为解决这非常重要和紧迫问题的工具之一。■

* 此中法连聚™的引用是：Camila Elyse Katz, CGCP专访：伊万 (Ivan Cardillo), 《中国法律连接》, 第6期, 第39页 (2019年9月), 亦见于斯坦福法学院中国指导性案例项目, 中法连聚™, 2019年9月, <http://cgclaw.stanford.edu/zh-hans/clc-spotlight/clc-6-201909-interview-7-camila-katz>.

此专访的英文原文由Camila Elyse Katz、英珍妮撰写，并由Nathan Harpainter和熊美英博士最后审阅。中文版本由王崢、张海韵、赵炜和朱新玥翻译，并由赵炜和熊美英博士最后审阅。载于本专访中的信息和意见受访者对其负责。它们并不一定代表中国指导性案例项目的工作或意见。



¹ Euraxess Services是一个由遍布40个欧洲国家的500多个服务中心组成的网络，旨在帮助研究人员及其家人计划和组织移居到国外。

² HAROLD J. BERMAN, LAW AND LANGUAGE: EFFECTIVE SYMBOLS OF COMMUNITY (Cambridge University Press, 1964)。

³ 《意大利费列罗公司诉蒙特莎 (张家港) 食品有限公司、天津经济技术开发区正元行销有限公司不正当竞争纠纷案》，斯坦福法学院中国指导性案例项目，中文指导性案例 (CGC47)，2015年5月15日 (最终版本)，<https://cgclaw.stanford.edu/zh-hans/guiding-cases/guiding-case-47>。

⁴ 见Laura Baccaglioni, Gabriella di Paolo, Fulvio Cortese, 意大利法律制度中的司法判例：转向遵循先例的模式？，斯坦福法学院中国指导性案例项目，2017年7月30日，<https://cgclaw.stanford.edu/zh-hans/commentaries/19-baccaglioni-di-paolo-cortese>。

⁵ 见Dorcas Wang, *China and Italy Sign New Double Taxation Agreement*, CHINA BRIEFING, 2019年4月10日，<https://www.china-briefing.com/news/china-italy-dta-updated-2019>。

⁶ G7或“七国集团”是由国际货币基金组织定义的七大发达经济体所组成的，其包括加拿大、法国、德国、意大利、日本、英国和美国。

⁷ 有关此主题的更多讨论，见受访者对谅解备忘录的分析。该分析将发表于本期刊的另一期。

⁸ “通往50之路”是2020年一个为了庆祝中国-意大利外交关系成立50周年的庆典。

⁹ *Firmato un Accordo Tra L'Agenzia delle Dogane e dei Monopoli e L'Amministrazione Generale delle Dogane della Repubblica Popolare Cinese per la Cooperazione tra la Direzione Regionale delle Dogane di Venezia, Trieste, Ravenna e il Distretto Doganale di Shanghai*, Agenzia Dogane Monopoli, 2019年7月1日，https://www.adm.gov.it/portale/documents/20182/5061418/cre-s-20190702-Cina_ITA.pdf/88f17fb7-2c8d-4948-96f0-87d28ca3c9c4。

¹⁰ *Regular Freight Trains Connect Chengdu, Milan*, XINHUA, 2018年8月11日，http://www.xinhuanet.com/english/2018-08/11/c_137383706.htm。

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¹² “一带一路”倡议的五大“合作重点”之一是“民心相通”。见英珍妮，《中国法律连接》与一带一路国家™，《中国法律连接》，第1期，第80页 (2018年6月)，亦见于斯坦福法学院中国指导性案例项目，中法连聚™，2018年6月，<http://cgclaw.stanford.edu/zh-hans/clc-spotlight/clc-1-201806-band-1-jennifer-ingram>。



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China's Belt and Road Initiative: Will Italy's Participation Inspire More EU Followers?*

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Abstract

Since the launch of the Belt and Road Initiative (the “BRI”) in 2013, China has strived to make Europe become part of the initiative. Italy’s decision to join the BRI in March 2019 marks China’s first success in this endeavor. Will more European countries, especially those from the European Union (“EU”), follow Italy’s footsteps? To answer this question, the authors first lay out the basic framework of EU–China relations that has developed since 2003, when the two sides officially established their strategic partnership. The authors then discuss how China has demonstrated since 2013 its continued enthusiasm for increasing cooperation with Europe while the EU has communicated its limits with respect to deepening EU–China ties. Against this background, the authors explain Italy’s decision to join the BRI and examine what the country may gain from its cooperation with China outlined in the related memorandum of understanding, while not compromising its EU or global obligations. Based on these analyses, the authors identify, at the end of the article, three achievements that China should seek to accomplish if it wants to see more EU countries take inspiration from Italy’s example and join the global plan.

question by first explaining the backdrop—the development of EU–China relations since 1975—against which Italy’s BRI membership occurs. The authors then analyze the main drivers of Italy’s decision to join the BRI and compare Italy’s and China’s potential gains under the plan. The authors conclude that Italy could be a trendsetter in the development of the BRI should China manage to achieve three accomplishments in the near future.

EU–China Relations

1. 1975–2013: The Rise of EU–China Relations

The EU and China established diplomatic ties in 1975.⁴ Since then, their relations have made much progress, especially in 2003, when the two sides jointly announced in October of that year their resolve to expand and deepen their relations, based on the guidance of the policy papers that each wrote about the other, to “promote the development of an overall strategic partnership between China and the EU”⁵

Titled *A Maturing Partnership—Shared Interests and Challenges in EU–China Relations*,⁶ the EU’s September 2003 policy paper updates the European Commission’s strategies on China published in 1998 and 2001, the latter being the same year of China’s accession to the World Trade Organization (“WTO”).⁷ In the 2003 policy paper, the EU outlines its plan to improve its relationship with China by taking actions across five priority areas:

- (1) sharing responsibilities with China in promoting global governance;
- (2) supporting China’s transition to an open society based on the rule of law and respect for human rights;
- (3) promoting China’s economic opening at home and abroad;
- (4) ensuring that cooperation with China takes the form of a mutually beneficial partnership that underpins EU objectives (e.g., the EU supports China’s social and economic reform process, environmental protection and sustainable development, as well as good governance and the rule of law); and
- (5) raising the EU’s profile in China.

In *China’s EU Policy Paper* published in October 2003,⁸ China asserts its commitment to “a long-term, stable and full

Introduction

From the outset, Europe has occupied a special place in China’s vision for its Belt and Road Initiative (the “BRI”).¹ To encourage the continent to join the BRI, Chinese leaders have organized multiple official visits to different European countries in recent years.² In addition, China has deepened its cooperation with Central and Eastern European countries under the 16+1 mechanism, which was launched by China’s Ministry of Foreign Affairs to promote BRI business and investment opportunities in the Central and Eastern European region.³

Italy has reciprocated this enthusiasm by formally joining the BRI in March 2019. Will other European countries, especially members of the European Union (the “EU”), follow suit? This article seeks to shed some light on this

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partnership with the EU”, as it outlines the country’s plans to strengthen cooperation with the bloc in the following aspects:

- (1) political (including strengthening the exchange of high-level visits and political dialogue and continuing human rights dialogue);
- (2) economic (including cooperation in financial, agricultural, environmental, information technology, energy, and transportation sectors);
- (3) education, science and technology, culture, health, and other;
- (4) social, judicial, and administrative; and
- (5) military.

The next decade saw progress in the development of the EU–China strategic partnership, as reflected, for example, in the growth of total EU–China trade.⁹ This progress further led to the joint publication in November 2013 of the *EU–China 2020 Strategic Agenda for Cooperation* (the “2013 EU–China Strategic Agenda”).¹⁰ In this document, both parties agreed to implement, through their annual EU–China Summit, key initiatives across four main areas (see **Table 1**).

2. Since 2013: China’s Continued Enthusiasm

(1) 2013 EU–China Strategic Agenda and the BRI

The release in November 2013 of the *2013 EU–China Strategic Agenda*, which has clear synergies with the BRI’s five

Areas	Key Initiatives
1 Peace and Security	Dialogue, cooperation, and coordination
2 Prosperity	Trade and investment
	Industry and information
	Agriculture
	Transport and infrastructure
3 Sustainable Development	Science, technology, and innovation
	Space and aerospace
	Energy
	Urbanization
	Climate change and environmental protection
	Ocean
	Regional policy
Public policy	
4 People-to-People Exchanges	Culture, education, and youth
	Facilitation of people-to-people exchanges

Table 1: 2013 EU–China Strategic Agenda

cooperation priority areas (see **Table 2**),¹¹ can be considered an early success in China’s promotion of the initiative after Chinese President XI Jinping first introduced the BRI while visiting Kazakhstan’s Nazarbayev University in early September 2013.¹² **Table 2** also shows how the *2013 EU–China Strategic Agenda* clarifies the specific activities that the EU and China can undertake under each BRI priority area.

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BRI Priority Areas	Activities Stated in the 2013 EU–China Strategic Agenda
1 Policy coordination	<ul style="list-style-type: none"> • holding regular dialogues on defense and security policy • strengthening policy exchanges to facilitate industrial products trade • reinforcing exchanges and cooperation in energy policy (e.g., green and low-carbon development, aviation emissions, water policy) • promoting mutual understanding and cooperation in regional policy (e.g., EU–China High Level Dialogue and Seminar on Regional Policy) • developing an EU–China Public Policy Dialogue Mechanism • upgrading dialogues on culture, youth, and education policies
2 Facilities connectivity	<ul style="list-style-type: none"> • strengthening cooperation in developing smart, upgraded and fully interconnected infrastructure systems (e.g., seamless supply chain logistics networks between Asia and Europe, maritime markets and routes, rail services)
3 Unimpeded trade	<ul style="list-style-type: none"> • reaffirming the High-Level Economic and Trade Dialogue • negotiating and concluding a comprehensive EU–China Investment Agreement • striving for WTO agreement on trade facilitation • strengthening EU–China customs cooperation • enhancing international standardization (Europe–China Standardisation Information Platform)
4 Financial integration	<ul style="list-style-type: none"> • using the Chinese Yuan/Euro Bilateral Swap Arrangement to <ul style="list-style-type: none"> ◦ reassure Euro area banks of the continuous provision of Chinese yuan ◦ increase the use of the Chinese yuan in cross-border trade and investment ◦ promote EU–China trade and investment facilitation
5 People-to-people bonds	<ul style="list-style-type: none"> • harnessing the lead role of the EU–China High Level People-to-People Dialogue • strengthening cultural cooperation (e.g., UNESCO, EU–China High Level Cultural Forum) • supporting youth exchange (e.g., EU–China Youth Policy Dialogue, EU–China Symposia on Youth Work Development, EU–China Youth Partnership for Friendship Programme) • continuing education dialogues (e.g., Higher Education Platform for Cooperation and Exchanges) • encouraging Chinese and EU language learning in respective education systems • launching EU–China Mobility and Migration Dialogue • setting up a regular EU–China Tourism Dialogue and information exchange mechanism

Table 2: BRI Cooperation Priority Areas and the 2013 EU–China Strategic Agenda

(2) Two More Policy Papers on the EU

In 2014, just a year after the release of the *2013 EU–China Strategic Agenda*, China issued its second policy paper on the EU, emphasizing:

[China] is committed to working with the EU and its member states to fully implement the *China–EU 2020 Strategic Agenda for Cooperation* in the course of comprehensive deepening of reform in China and economic recovery in Europe, build partnerships for peace, growth, reform and civilization and further increase the global impact of China–EU relations.¹³

China continued its momentum in 2018 by issuing its third policy paper on the EU. In this document, China sets forth guiding principles for its relations with the EU, followed by plans for the two sides in four areas:

- (1) Cooperation in Political, Security and Defense Fields;
- (2) Cooperation in Trade, Investment, Connectivity, and Fiscal and Financial Fields;
- (3) Cooperation in Scientific Research, Innovation, Emerging Industries, and Sustainable Development; and
- (4) Social and People-to-People Cooperation.¹⁴

China’s release of these two policy papers on the EU within such a short time suggests the country’s keen interest in working closely with Europe. It is unclear whether this interest was caused by China’s concerns over its overall, slower growth in Europe after 2016,¹⁵ tensions in China–U.S. relations, and/or the lack of progress in its pursuit of market economy status.¹⁶

3. Since 2013: EU’s Attempts to Set Limits

While China has continued to show its strong interest in the EU since 2013, the sentiments of the EU toward China appear to be different, as reflected in three major documents released from 2016 to 2019.

(1) 2016 EU Strategy on China

In 2016, a year after the first official document describing the BRI was released,¹⁷ the EU published *Elements for a New EU Strategy on China* (the “2016 EU Strategy on China”).¹⁸ While acknowledging the abovementioned *2013 EU–China Strategic Agenda* as the “highest-level joint document guiding the EU–China Comprehensive Strategic Partnership”, the document also points out the EU’s need for its own strategy “which puts its own interests at the forefront in the new relationship” and “promotes universal values [...]” “with the constructive management of differences.”¹⁹

Strategic Goals	Examples of Consistencies with BRI	Examples of Limits Set by the EU
Principles of Engagement	Relationship should be of reciprocal benefit both politically and economically	<ul style="list-style-type: none"> • EU expects “genuine implementation of the Chinese slogan ‘win-win co-operation’”
Prosperity and Reform Agenda	Boosting trade and investment	<ul style="list-style-type: none"> • EU expects improved market access for foreign companies in China and a level playing field for business and investment, including fewer protected sectors
	Research, innovation, and the digital economy	<ul style="list-style-type: none"> • Intensify intellectual property (“IP”) rights protection and enforcement, and reinforce measures to counter cyber-enabled theft of IP and trade secrets
	Connectivity and people-to-people links	<ul style="list-style-type: none"> • EU–China Connectivity Platform is the main vehicle for working with China to connect the Eurasian continent via physical and digital networks through which trade, investment, and people-to-people contacts can flow • Cooperation on the BRI depends on China making it an open platform that adheres to market rules and international norms to benefit all
Finding Common Interests on Foreign Policy and Security	Reinforcing cooperation with China on foreign policy	<ul style="list-style-type: none"> • Link recognition of China’s greater role in international relations and governance to its greater adherence to international rules and standards
Global Governance and Working Together in the Multilateral Context	Respect for international law and universal values	<ul style="list-style-type: none"> • EU should continue its insistence on China’s compliance with its international legal and human rights obligations, both in China and abroad, and should work with China to this end
A More Joined-Up Approach Towards China	Annual summits and high-level dialogues will set objectives and priorities, with yearly implementation reviews and reporting	<ul style="list-style-type: none"> • EU Members should reinforce agreed EU positions in bilateral relations with China, and EU bodies should ensure they are aware when EU interests must be safeguarded

Table 3: Breakdown of the 2016 EU Strategy on China

As shown in **Table 3**, the *2016 EU Strategy on China* shares many goals with the BRI, but it also shows the EU’s attempts to set some limits emphasizing EU values and priorities. For example, like the BRI, a central principle of engagement of the EU strategy is that the relationship between the two sides should be “of reciprocal benefit both politically and economically”, but the document emphasizes that the EU expects “genuine implementation of the Chinese slogan ‘win-win co-operation’”.²⁰

“While China has continued to show its strong interest in the EU since 2013, the sentiments of the EU toward China appear to be different, as reflected in three major documents released from 2016 to 2019.”

Among the sharpest examples illustrating how the EU sets some limits in the *2016 EU Strategy on China* are the following statements under the section describing plans with respect to “connectivity and people-to-people links”:

The EU should use the EU–China Connectivity Platform as its main vehicle for working with China to connect the Eurasian continent via a physical and digital network through which trade, investment and people-to-people contacts can flow.

Co-operation with China on its “One Belt, One Road” initiative should be dependent on China fulfilling its declared aim of making it *an open platform which adheres to market rules and international norms in order to deliver benefits for all.* (emphasis added)²¹

This is one of the clearest indications that the EU—in the same year that Chinese foreign direct investment in Europe hit an all-time high²²—did not intend to simply sign on to the Chinese plan in accordance with China’s terms and conditions.

(2) 2018 EU Strategy on Asia

In September 2018, the EU published *Connecting Europe and Asia—Building Blocks for an EU Strategy* (the “*2018 EU Strategy on Asia*”).²³ As a part of the EU’s contribution to the 12th Asia–Europe Meeting, the *2018 EU Strategy on Asia* acknowledges the importance of the Asian continent to the EU by noting, for example, that Asia is home to roughly 60% of the world’s population and accounts for 35% of the EU’s exports (EUR 618 billion) and 45% of the EU’s imports (EUR 774 billion).²⁴ The document states that the EU will work with its neighbors and Asian partners in three main areas:

- building connections in (air, sea, and land) transportation, digital, and energy sectors;
- building international partnerships for sustainable connectivity, including strengthening

Area	No.	Specific Actions
Cooperating with China to support effective multilateralism and fight climate change	1	The EU will strengthen cooperation with China to meet common responsibilities across all three pillars of the United Nations (Human Rights, Peace and Security, and Development).
	2	In order to fight climate change more effectively, the EU calls on China to peak its emissions before 2030, in line with the goals of the Paris Agreement (on climate change).
Commitment to international peace, security, and sustainable economic development	3	The EU will deepen engagement with China on peace and security, building on the positive cooperation on the Joint Comprehensive Plan of Action for Iran.
	4	To preserve its interest in stability, sustainable economic development, and good governance in partner countries, the EU will apply more robustly the existing bilateral agreements and financial instruments, and work with China to follow the same principles through the implementation of the <i>2018 EU Strategy on Asia</i> .
Achieving a more balanced and reciprocal trade and investment relationship	5	In order to achieve a more balanced and reciprocal economic relationship, the EU calls on China to deliver on existing joint EU–China commitments. This includes reforming the WTO, in particular on subsidies and forced technology transfers, and concluding bilateral agreements on investment by 2020, on geographical indications swiftly, and on aviation safety in the coming weeks.
	6	To promote reciprocity and open up procurement opportunities in China, the European Parliament and the Council should adopt the International Procurement Instrument before the end of 2019.
Strengthening the Union's competitiveness and ensuring a level playing field	7	To ensure that not only price but also high levels of labor and environmental standards are taken into account, the Commission will publish guidance by mid-2019 on the participation of foreign bidders and goods in the EU procurement market. The Commission, together with Member States, will conduct an overview of the implementation of the current framework to identify shortcomings before the end of 2019.
	8	To fully address the distortive effects of foreign state ownership and state financing in the internal market, the Commission will identify before the end of 2019 how to fill existing gaps in EU law.
Strengthening the security of critical infrastructure and the technological base	9	To safeguard against potential serious security implications for critical digital infrastructure, a common EU approach to the security of 5G networks is needed. To kickstart this, the European Commission will issue a Recommendation following the European Council.
	10	To detect and raise awareness of security risks posed by foreign investment in critical assets, technologies, and infrastructure, Member States should ensure the swift, full, and effective implementation of the Regulation on screening of foreign direct investment.

Table 4: 2019 EU Outlook on China

bilateral cooperation with China and regional cooperation with Asia generally; and

- increasing and improving investments in sustainable connectivity.²⁵

The *2018 EU Strategy on Asia* also makes clear that the strategy expressed in the document is rooted in “principles of sustainable, comprehensive and international rules-based connectivity”.²⁶

This expansive scope begs comparison to China’s aspirations to improve and increase connections, partnerships, and investments in connectivity around the world under the BRI. Does the *2018 EU Strategy on Asia* signal that the EU is on board with the BRI’s vision? Or does it rather communicate how the EU seeks to achieve the same general goals of the China-led plan without having to “join” it? Another EU document on China that was issued in March 2019 provides some answers.

(3) 2019 EU Outlook on China

In March 2019, a document titled *EU–China—A Strategic Outlook* (the “*2019 EU Outlook on China*”) was issued.²⁷

In the document, the European Commission calls China a “systemic rival” (with respect to its promotion of alternative models of governance) in the same sentence it identifies the country as a “cooperation partner with whom the EU has closely aligned objectives”.²⁸ Thus, it acknowledges the need for a “flexible and pragmatic whole-of-EU approach enabling a principled defence of interests and values.”²⁹

The *2019 EU Outlook on China* first clarifies that the *2016 EU Strategy on China* “remains the cornerstone of EU engagement” and then sets out ten concrete actions for discussion and endorsement by the European Council (see **Table 4**).³⁰ The press release announcing these actions states that “[they] are formulated in the context of relations with China, but some of them relate to the EU’s global competitiveness and security”.³¹

These actions seem to be highlighting the ways in which the EU plans to ensure that any cooperation with the BRI happens, as specified in the *2016 EU Strategy on China*, only after China has made its global initiative “an open platform which adheres to market rules and international norms in order to deliver benefits for all”.³² This can be seen with the references to the

United Nations' pillars (i.e., human rights, peace and security, and development) and the Paris Agreement on climate change, for instance. In addition, the *2019 EU Outlook on China* mentions the *2018 EU Strategy on Asia* (see **Table 4**), making clear that the EU plan, which may be seen as an alternative to the BRI, is still very much a priority.

“Does the 2018 EU Strategy on Asia signal that the EU is on board with the BRI’s vision? Or does it rather communicate how the EU seeks to achieve the same general goals of the China-led plan without having to ‘join’ it?”

Italy and the BRI

Against the above backdrop of EU–China relations, Italy joined the BRI on March 23, 2019, two years after the country’s prime minister attended the first Belt and Road Forum for International Cooperation held in Beijing.³³ Italy’s participation in the BRI is significant, as the country is the first G7 member to formally support China’s global plan.

Cooperation between Italy and China is not new, however. The two countries have been strengthening their economic and political ties since 2013, while, as discussed above, the EU as a whole was setting limits for its cooperation with China. In 2014, for example, the two countries set up the Sino–Italy Ningbo Ecological Industrial Park,³⁴ which had attracted 16 industrial projects and RMB 3 billion in investment by the first quarter of 2018.³⁵ To encourage innovation, they have also signed the *China-Italy Action Plan for Strengthening Cooperation in Economy, Trade, Culture and Science and Technology (2017–2020)*.³⁶

Why did Italy go against the general trend in the EU and continue forming strong relations with China, to the extent of joining the BRI? The following sections analyze the main drivers of Italy’s BRI membership and the benefits that Italy and China stand to gain according to the memorandum of understanding (“MOU”) which outlines their plans for cooperation under the BRI.³⁷

1. Main Drivers of Italy’s BRI Membership

Italy’s decision to join the BRI is largely driven by the country’s attempt to find a way to overcome its current economic and governance challenges.

Since 2001, Italy’s average gross domestic product (“GDP”) growth rate has been 0.25%, compared with the EU’s average 1.7%.³⁸ In particular, the triple-dip recession that Italy has experienced since the 2008 global recession has taken its toll on the country. Industrial production has fallen drastically

and overall unemployment has soared to double digits.³⁹ Worse, the country entered another recession in 2018, with GDP being projected to decrease by 0.2% in 2019.⁴⁰

These economic challenges have led to governance problems. Short of resources, the government cannot enhance infrastructure or deliver quality public services.⁴¹ Low investment over the past ten years has led to great concerns about the quality of Italian infrastructure.⁴² The collapse of Genoa’s Morandi motorway bridge in August 2018, which caused the death of 43 people and left 600 homeless, was a tragic example of Italy’s current infrastructure-related challenges.⁴³

Italy has been unable to secure assistance from the EU. This prompted the country to turn to China and seize the opportunity of President XI Jinping’s state visit to the country to officially join the BRI in March 2019.⁴⁴

2. The Italy–China MOU: What Italy and China Stand to Gain

The MOU makes an effort to strike a balance between Italy’s obligations with respect to the EU and the world and its plans to benefit from its participation in the BRI by referencing, among others, two important EU policies (i.e., the *2013 EU–China Strategic Agenda* and *2018 EU Strategy on Asia*) and international agreements of global importance (i.e., the UN Charter, 2030 Agenda for Sustainable Development, and the Paris Agreement on climate change).

In particular, for example, the MOU states that “[t]he Parties will work together within the [BRI] [...] bearing in mind discussions in the EU China Connectivity Platform”. As noted above, the *2016 EU Strategy on China* provides that the EU should use this platform as its “main vehicle for working with China”.⁴⁵ The MOU explains that Italy plans to work with China to “strengthen cooperation and promote regional connectivity within an open, inclusive and balanced framework beneficial for all” (emphasis added). These emphasized qualities will enable Italy to join the BRI without alienating the EU-designed platform. Moreover, the note that cooperation under the MOU will be in accordance with not only domestic laws, but also each party’s international obligations⁴⁶ is consistent with the *2016 EU Strategy on China*’s reminder that EU Members’ engagement with China must comply with EU laws, rules, and policies.⁴⁷

After the above principles are stated, the two countries then identify in the MOU areas of cooperation, including “people-to-people connectivity”, “green development cooperation”, “transport, logistics and infrastructure”, “unimpeded trade and investment”, and “financial cooperation”. Given the main drivers of the country’s decision to join the Chinese initiative (see above), the promises with respect to the last three areas of cooperation are likely to be the most important to Italy in

the near future. The following paragraphs discuss how Italy and China stand to gain in these cooperation areas.

(1) Transport, logistics, and infrastructure

Cooperation in infrastructure connectivity in the form of Italy–China joint projects to improve Italian infrastructure will bring significant benefits to Italy. Italian ports are an important gateway for those seeking to access the European market. To promote multilateral transportation and customs cooperation along maritime trade routes, which include Italian ports, the Maritime Silk Road Port Cooperation Mechanism has been established.⁴⁸ Beyond transportation and customs cooperation, Deputy Director General of International Economic Affairs of China’s Ministry of Foreign Affairs GUO Xuejun notes that the mechanism will also “build the new technologies, new industries, and new forms of businesses at ports from different countries, to promote cooperation in scientific research and technology along the Maritime Silk Road.”⁴⁹

As for how China will benefit, Italian politician Romano Prodi, who served as president of the European Commission from 1999 to 2004, has noted the value of well-located Italian ports to China and the countries’ mutual interest in their development.⁵⁰ Italy’s location in the middle of the Mediterranean and the fact that the country provides the shortest route between the Suez Canal and central Europe, make the country’s port, road, and rail networks an ideal conduit for Chinese goods seeking to reach Europe through the continent’s southern gateway.⁵¹

(2) Unimpeded trade and investment

The expanded investment and trade flows, along with increased industrial cooperation planned under the BRI, can help improve the Italian economy. One of the most tangible benefits will be the investment funds that flow to Italy from its participation in the BRI. For example, the China Investment Corporation, through the newly established China–Italy Industrial Cooperation Fund, will provide financial support to Italian enterprises and increase industrial investment in the country.⁵² Transparent, non-discriminatory, and open procurement will also ensure that qualified Italian companies will be able to participate in BRI-related projects.

The Chinese economy will also benefit. Undersecretary of State Michele Geraci, of the Italian Ministry of Economic Development, has noted China’s and Italy’s broad prospects for cooperation in the areas of agriculture, food, the environment, and the digital economy, stemming from the highly complementary industries shared by the countries.⁵³ For instance, Italy has a highly

reputable manufacturing industry (including processing and agricultural machinery products), while China is advanced in digital mobile payments.⁵⁴ Agreeing that China and Italy’s economies are highly complementary, Chinese Foreign Minister WANG Yi has said that deepening cooperation in manufacturing, agriculture, and innovation will bring tangible benefits to the business communities and people of the two countries.⁵⁵

Finally, the MOU’s specific emphasis on leveling the playing field for business and respecting intellectual property rights will help to ensure that cooperation is mutually beneficial. Both are consistent with the *2016 EU Strategy on China* (see **Table 3**) and *2019 EU Outlook on China* (see **Table 4**). Prioritizing these objectives may also assuage some of the EU and other countries’ fears about China’s commitment to these areas.

(3) Financial cooperation

The MOU notes that China and Italy will collaborate on “fiscal, financial, and structural reform policies” as it also announces that the two countries’ finance ministries will establish a dialogue.⁵⁶ The first Italy–China Finance Dialogue (the “2019 Italy–China Finance Dialogue”) was held in Rome in July 2019, just months after the MOU was signed and the Second Belt and Road Forum for International Cooperation was held in Beijing.⁵⁷ The gathering saw deals signed to establish cooperation mechanisms between export credit agencies and leading enterprise and financial institutions of the two countries, as well as agreements to help provide targeted financing and insurance solutions to third-party markets.⁵⁸ This is in addition to the March 2019 deal signed by the Italian investment bank *Cassa depositi e prestiti* and the Bank of China laying out a “Panda Bonds” issuance plan worth RMB 5 billion to support the growth of Italian firms in the Chinese market.⁵⁹

As for China, Italy’s participation in the BRI opens the door for China to Italy itself, the greater EU market, and possibly other regions, like Africa. China’s access to the Italian market was bolstered at the close of the 2019 Italy–China Finance Dialogue by the countries’ agreement to “strengthen cooperation in the financial market, promote two-way market access, and support their qualified financial institutions to expand business in each other’s market.”⁶⁰ As noted above, Italy’s transportation networks are also an ideal conduit for trade to Europe more generally, which China can utilize more as its cooperation with Italy expands under the BRI.⁶¹ Finally, given Italy’s history of strong ties with Africa and close geographic position with respect to the continent, it is reasonable to expect that there may be some Sino–Italian cooperation in BRI projects in certain African countries.⁶²

Concluding Remarks: Will Italy Be a Trendsetter?

Amidst the suspicions about China's global vision,⁶³ the Italian example shows how a European country may benefit from joining the BRI, whose goals are broad enough to be shared by a country with very specific needs and a very different history from China. If Italy is able to fulfill its BRI obligations, without compromising the country's obligations towards the EU and the rest of the world, the country will prove itself a trendsetter in one of the most transformative initiatives in recent history. The authors believe that this is more likely if China can accomplish three achievements in the near future:

- Demonstrate that the BRI is a rules-based initiative compatible with recognized international organizations and important international principles.

BRI cooperation between China and Italy has the potential to support the rules-based international economic system and strengthen multilateralism generally. At the 2019 Italy-China Finance Dialogue, Italy and China agreed that they would "promote an open world economy and sustainable development" by upholding and supporting the WTO, G20, International Monetary Fund, and multilateral development banks like the World Bank and AIIB, which plays an important role in the BRI.⁶⁴

If the BRI is shown to be aligned with these recognized bodies and can be implemented in accordance with principles consistent with those enshrined in the UN Charter and those seeking to achieve sustainable and green development, other EU countries' decisions to join will be subject to less scrutiny. With respect to the latter, in particular, while the Italy-China MOU references the Paris Agreement on climate change, China has previously stressed the importance of the principle of "common but differentiated responsibilities", which balances the need for all states to take responsibility for global environmental problems with an acknowledgement that different states have different levels of economic development.⁶⁵ The country will have to address concerns about whether this may suggest inadequate commitment to meeting international emissions

targets, as well as concerns regarding the general impact of BRI development on climate change.⁶⁶

- Demonstrate that EU members can join the BRI and still comply with EU laws, rules, and policies.

All countries make decisions based on their domestic needs, but regional concerns must always be considered, especially when the country is a member of a regional group like the EU. As noted above, the *2016 EU Strategy on China* clearly states that "EU Members' engagement must comply with EU laws, rules and policies."⁶⁷ This is true of not only EU members' engagement with China but also their participation in initiatives like the BRI. If Italy (and other EU members) can show that their cooperation with China under the BRI does not conflict with EU policies and obligations, then more EU members may show greater readiness to join.

- Go beyond high-level discourse and highlight the practical gains, on the ground, to countries that have joined the BRI.

As the first G7 country to join the BRI, Italy's participation means a lot to China and the global initiative itself. According to Peter Frankopan, Professor of Global History at Oxford University, Italy's move is "largely symbolic" and "adds gloss to the existing scheme and also shows that China has an important global role."⁶⁸ For the BRI to become a real option for other EU members (and countries around the world), however, China must move away from symbolism and focus on the practical gains the initiative can bring to countries, like Italy, that are facing difficult challenges on the ground.

Future issues of *China Law Connect* will focus on whether China can accomplish the abovementioned three achievements as well as track how other EU countries' interest and/or participation in the BRI evolves. If China delivers what it promises to Italy under the MOU and Italy's benefits indeed outweigh its and the international community's concerns, more EU members will likely follow Italy's example and participate in China's global plan. Thus, a new world order may emerge. ■

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¹ The overall goal of promoting the connectivity of Asian, European, and African countries appears throughout China's first official document describing the country's vision for the initiative. 《推动共建丝绸之路经济带和21世纪海上丝绸之路的愿景与行动》(Vision and Actions on Jointly Building Silk Road Economic Belt and 21st-Century Maritime Silk Road), issued by the National Development and Reform Commission, Ministry of Foreign Affairs, and Ministry of Commerce of the People's Republic of China, with State Council authorization, on Mar. 28, 2015, <https://eng.yidaiyilu.gov.cn/qwyw/qwfb/1084.htm>.

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中国“一带一路”倡议：意大利的参与会激发更多的欧盟追随者吗？*

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摘要

自“一带一路”倡议（“一带一路”）于2013年启动以来，中国致力吸引欧洲国家参与该倡议。意大利在2019年3月加入“一带一路”的决定标志着中国的努力取得了初步成果。是否会有更多的欧洲国家，尤其是来自欧洲联盟（“欧盟”）的国家跟随意大利的脚步？为解答这一问题，作者首先阐释了自2003年欧盟和中国正式建立战略伙伴关系以来，欧盟-中国关系发展的基本框架。随后作者讨论了中国自2013年以来如何表现出对与欧洲加强合作的持续热忱，但同时欧盟就深化欧盟-中国关系方面表达了其限制。在此背景下，作者解释了意大利加入“一带一路”的决定，并研究了该国将从相关谅解备忘录中所概述的意中合作中可能获得的利益，但同时不会影响其在欧盟或全球义务。基于这些分析，作者在文章作结时指出，中国若想更多欧盟国家从意大利的经验中得到启发而加入中国此一全球性计划，中国应寻求取得三项成就。

欧盟-中国关系

1. 1975-2013年：欧盟-中国关系的兴起

欧盟和中国于1975年建立了外交关系。⁴此后，双方关系取得了很大进展，特别是2003年。双方在当年的10月份共同宣布了在彼此撰写关于对方的政策文件的指导下扩大和深化两者关系的决心，以“促进中国和欧盟全面战略伙伴关系的发展”。⁵

欧盟于2003年9月发表了标题为《更成熟的伙伴关系——欧盟-中国关系中的共同利益与挑战》的政策文件。⁶该文件更新了欧盟委员会于1998年和2001年发布的对华战略，后者是中国加入世界贸易组织（“世贸组织”）的同一年。⁷在2003年的政策文件中，欧盟概述了通过在五个优先领域采取行动来改善与中国的关系的计划：

- (1) 与中国分担促进全球治理的责任；
- (2) 支持中国在法治和尊重人权的基础上过渡成为开放社会；
- (3) 促进中国在国内外的经济开放；
- (4) 确保与中国的合作采取支持欧盟目标（例如，欧盟支持中国的社会和经济改革进程、环境保护和可持续发展、良好治理和法治）的互惠伙伴关系形式；和
- (5) 提高欧盟在中国的形象。

在2003年10月发布的《中国对欧盟政策文件》中，⁸中国作出其“与欧盟建立长期、稳定和全面的伙伴关系”的承诺，同时概述了中国在以下方面加强与欧盟合作的计划：

- (1) 政治（包括加强高层互访和政治对话，以及继续开展人权对话）；
- (2) 经济（包括在金融、农业、环境、信息技术、能源和运输领域的合作）；
- (3) 教育、科技、文化、卫生等；
- (4) 社会、司法和行政；和
- (5) 军事。

之后十年，欧盟-中国战略伙伴关系的发展取得了进展。例如，欧盟-中国贸易总额的增长就体现了这一点。⁹这一进展继而促成了双方在2013年11月联合出版《中欧合作2020战略规划》。¹⁰在这份文件中，双方同

引言

从一开始，欧洲就在中国“一带一路”倡议（“一带一路”）的愿景中占有特殊的位置。¹为了鼓励欧洲大陆国家加入“一带一路”，中国领导人近年来组织了多次对欧洲各国的官方访问。²此外，中国在16+1机制下，加深了其在中东欧国家的合作。此机制是由中国外交部启动，以促进“一带一路”在中东欧地区的商业和投资机会。³

对于中国的热切欢迎，意大利作出回应，于2019年3月正式加入“一带一路”。其他欧洲国家，尤其是欧洲联盟（“欧盟”）成员国也会效仿吗？本文尝试阐明这个问题。作者首先解释意大利加入“一带一路”的大背景——1975年以来欧盟-中国关系的发展。随后作者分析了意大利决定加入“一带一路”主要的驱动因素，并比较了意大利和中国在该计划下的潜在得益。作者得出的结论是，如果中国在不久的将来能取得三项成就，意大利可能会成为“一带一路”发展的引领者。

英珍妮

斯坦福法学院中国指导性案例项目执行编辑

自中国指导性案例项目(China Guiding Cases Project; CGCP)创建时起,英珍妮就开始为其工作。目前,她主要管理CGCP的“一带一路”系列,以加深利益相关者对这一重要但尚未完全清晰的发展的理解。她还在不同司法管辖区(南非、肯尼亚、印度、荷兰和匈牙利)的争议解决方面拥有经验。她亦曾从企业和法律角度审查大型投资项目,并分析其对社区的影响。英女士获得耶鲁大学的文学学士学位(主修种族、人种和迁移)和斯坦福法学院的法学博士学位。



意通过年度欧盟-中国峰会来实施四个领域的主要倡议(见表1)。

2. 自2013年以来:中国持续的热忱

(1)《中欧合作2020战略规划》与“一带一路”

2013年11月发布的《中欧合作2020战略规划》与“一带一路”的五大“合作重点”有着明显的协同作用(见表2)。11故这一规划的发布可被视为自中国国家主席习近平于2013年9月初在访问哈萨克斯坦的纳扎尔巴耶夫大学时首次提出“一带一路”以来,中国在推动该倡议方面取得的初步成功。12表2也展示了《中欧合作2020战略规划》如何阐明在“一带一路”合作重点领域,欧盟和中国可以开展的具体活动。

(2)关于欧盟的另外两份政策文件

2014年,时隔《中欧合作2020战略规划》的发布仅一年,中国发表了第二份关于欧盟的政策文件,并且强调:

中国[...]致力于同欧盟及其成员国一道,在中国全面深化改革和欧洲经济复苏的进程中,全面落实《中欧合作2020战略规划》,打造“和平、增长、改革、文明”四大伙伴关系,进一步提升中欧关系的全球影响力。13

2018年,中国继续这股动量,发表了关于欧盟的第三份政策文件。在这份文件中,中国说明了和欧盟关系的指导原则,且公布了双方在四个领域中的规划:

领域	主要倡议
1 和平与安全	对话、合作与协调
2 繁荣	贸易与投资
	工业和信息化
	农业
	交通和基础设施
3 可持续发展	科技创新
	空间与航天
	能源
	城镇化
	气候变化与环境保护
	海洋
	区域政策
4 人文交流	文教和青年
	便利人员往来

表1:《中欧合作2020战略规划》

- (1) 政治安全防务等领域合作;
- (2) 贸易投资、互联互通、财政金融等领域合作;
- (3) 科研创新、新兴产业、可持续发展等领域合作;
- (4) 社会人文领域合作。14

中国在如此短的时间内发布了这两份关于欧盟的政策文件意味着中国对与欧洲紧密合作有着浓厚的兴趣。目前尚不清楚这兴趣是否源于中国对其自2016年后在欧洲整体缓慢的增长的担忧、15中美之间的紧张关系,以及/或是中国在追求市场经济地位方面缺乏进展。16

李雪皎

斯坦福法学院中国指导性案例项目编辑

李雪皎在中国人民大学攻读国际法法律硕士学位,目前是哈佛大学法学院的交换生。在攻读硕士课程前,李女士获得了中央民族大学的法学学士学位。在该大学,她同时辅修了英语文学专业。此前,她在欧华律师事务所(DLA Piper Global LLP)及高伟绅律师事务所(Clifford Chance LLP)实习,专注前者的诉讼与规管业务和后者反垄断业务。在2018-2019学年,李女士参加了杰赛普(Phillip C. Jessup)国际法模拟法庭及国际人道法模拟法庭。在过去的两年中,她开展了多个与国际法和中国“一带一路”倡议相关的研究项目。



“一带一路”重点领域	《中欧合作2020战略规划》所述的活动
1 政策沟通	<ul style="list-style-type: none"> • 定期就防务与安全政策举行对话 • 加强政策交流，便利工业产品贸易 • 加强能源政策交流与合作（如，绿色低碳发展、航空排放、水资源政策） • 促进区域政策相互理解与合作（如，欧盟-中国区域政策高级别对话和研讨会） • 建立“中欧公共政策对话机制” • 深化文教和青年政策对话
2 设施联通	<ul style="list-style-type: none"> • 加强在智能、高端和互联互通的基础设施网络方面的合作（如，亚欧供应链物流网络兼容、海上运输市场和航线、铁路服务）
3 贸易畅通	<ul style="list-style-type: none"> • 重申高级别经贸对话 • 商谈并达成一份全面的欧中投资协定 • 争取达成WTO贸易便利化协定 • 加强欧中海关合作 • 加强国际标准化（欧中标准化信息平台）
4 资金融通	<ul style="list-style-type: none"> • 利用中欧双边本币互换协议 <ul style="list-style-type: none"> ◦ 确保欧元区银行的人民币持续供应 ◦ 扩大人民币在跨境贸易和投资中的使用 ◦ 促进欧中投资贸易便利化
5 民心相通	<ul style="list-style-type: none"> • 发挥欧中高级别人文交流对话机制的统领作用 • 加强文化合作（如，联合国教科文组织、欧中文化高峰论坛） • 支持青年交流（如，欧中青年政策对话、欧中青年就业发展论坛、“欧中青年友好伙伴”项目） • 继续教育对话（如，高等教育合作与交流平台） • 鼓励汉语和欧洲语言在各自教育系统中的学习 • 启动欧中人员往来和移民领域对话 • 建立欧中定期旅游对话和信息交流机制

表2：“一带一路”合作重点领域与《中欧合作2020战略规划》

3. 自2013年以来：欧盟尝试设限

自2013年以来，中国持续表现出与欧盟深入合作的浓厚兴趣，但欧盟对中国的看法似乎有所不同，这反映在2016年至2019年发布的三份主要文件中。

(1) 《2016欧盟对华战略》

2016年，在第一份描述“一带一路”的官方文件发布一年之后，¹⁷ 欧盟发布了《欧盟对华新战略要素》（“《2016欧盟对华战略》”）。¹⁸ 在承认上述《中欧合作2020战略规划》为“指导欧盟-中国全面战略伙伴关系的最高级别联合文件”的同时，该文件还指出了欧盟对自身战略的需求，而这战略“将其自身利益置于新关系的首位”，以及“通过对分歧进行建设性的管理来促进普遍价值[...]”。¹⁹

如表3所示，《2016欧盟对华战略》与“一带一路”有许多共同目标，但也表明欧盟尝试设限，来强调欧盟的价值观和优先事项。例如，与“一带一路”一样，欧盟战略中关于参与的核心原则是双方关系应该是“在政治和经济上都是互惠互利的”，但该文件也强调欧盟希望“中国‘互利共赢’的口号得到真正落实”。²⁰

最能说明欧盟如何在《2016年欧盟对华战略》中设定一些限制的鲜明例子是在描述“互联互通和人员联系”计划的声明：

“自2013年以来，中国持续表现出与欧盟合作的浓厚兴趣，但欧盟对中国的看法似乎有所不同，这反映在2016年至2019年发布的三份主要文件中。”

欧盟应将欧盟-中国互联互通平台作为与中国合作的主要工具，通过实体和数字网络连接欧亚大陆，进行贸易、投资和人员交流。

和中国在“一带一路”倡议的合作应取决于中国能否实现其声明的目标，即将“一带一路”打造为遵守市场规则和国际规范的开放平台，让各方受惠。（强调后加）²¹

这是最明显的信号之一，其表明，就算当年是中国对欧洲的外国直接投资创历史新高的一年，²² 欧盟仍不打算简单地按照中国的条款和条件签署参与中国的计划。

(2) 《2018年欧盟对亚洲战略》

2018年9月，欧盟发布了《连接欧洲和亚洲——对欧盟战略的设想》（“《2018年欧盟对亚洲战略》”）。²³ 作为欧盟对第十二届亚欧会议所作贡献的一部分，《2018年欧盟对亚洲战略》承认亚洲大陆对欧盟的重要性，

战略目标	与“一带一路”一致的示例	欧盟设限的示例
参与原则	关系应该是在政治和经济上都是互惠互利的	• 欧盟希望“真正落实中国‘互利共赢’的口号”
繁荣与改革议程	推动贸易和投资	• 欧盟期望改善在华外企的市场准入，为商业和投资提供公平环境，包括更少的受保护行业
	研究、创新和数字经济	• 强化知识产权保护和执法，加强打击网络窃取知识产权和商业秘密的措施
	联通和人文联系	• 欧盟-中国互联互通平台是与中国合作的主要工具，通过实体和数字网络连接欧亚大陆，进行贸易、投资和人文交流 • 关于“一带一路”的合作取决于中国将其打造为遵守市场规则和国际规范的开放平台，让各方受惠
寻求外交政策和安全领域的共同利益	加强与中国在外交政策上的合作	• 把承认中国在国际关系和治理中的更大的角色与其更加遵循国际规则 and 标准相联系
全球治理和多边环境下的合作	尊重国际法律和普世价值	• 欧盟应继续坚持中国在国内履行其国际法律和和人权义务，并为此与中国合作
对华更具联合性的行动	年度峰会和高级别对话将设定目标和优先事项，并进行年度落实情况评估和报告	• 欧盟成员国应在与中国双边关系中巩固已商定的欧盟立场，并且欧盟机构应确保它们明确何时必须保障欧盟利益

表3：《2016年欧盟对华战略》分析

其指出：例如，亚洲是世界约60%的人口家园、在欧盟出口总额（6180亿欧元）中占35%、在欧盟进口总额（7740亿欧元）中占45%。²⁴该文件指出，欧盟将在三个主要领域与邻国和亚洲伙伴合作：

- 在海、陆、空交通运输、数字和能源领域建立连接；
- 建立国际合作伙伴关系以实现可持续的互联互通，包括加强与中国的双边合作和总体与亚洲的区域合作；及
- 增加与改善在可持续的互联互通上的投入。²⁵

《2018年欧盟对亚洲战略》还明确指出，该文件中表达的战略植根于“可持续、全面和基于国际规则的互联互通原则”。²⁶

这一扩张性范围可以与中国在全球范围内增进“一带一路”下的联系、伙伴关系和互联互通的投入的意愿相比较。《2018年欧盟对亚洲战略》是否表明欧盟已加入“一带一路”的愿景？还是它表示了欧盟正在寻求实现与中国主导的计划大体相同的目标但不必“加入”中国的倡议？2019年3月发布的另一份欧盟关于中国的文件提供了一些答案。

(3) 《2019年欧盟对华展望》

一份名为《欧盟-中国：战略展望》（“《2019年欧盟对华展望》”）的文件在2019年3月发布。²⁷欧盟委员会在该文件中认定中国为“与欧盟有着紧密一致目标的合作伙伴”，但在同一语句中称中国为“系统性竞争对手”（就其推动另类治理模式而言）。²⁸因此，它承认需要“灵活、务实的并以欧盟为整体的方法，以原则上捍卫利益和价值。”²⁹

“《2018年欧盟对亚洲战略》是否表明欧盟已加入‘一带一路’的愿景？还是它表示了欧盟正在寻求实现与中国主导的计划大体相同的目标但不必‘加入’中国的倡议？”

《2019年欧盟对华展望》首先阐明了《2016年欧盟对华战略》“仍然是欧盟参与的基石”，然后提出了十项具体行动供欧盟理事会讨论并认可（见表4）。³⁰宣布这些行动的新闻稿指出：“[它们]是在处理对华关系的背景下制定的，但其中一些是关于欧盟的全球竞争力和安全的。”³¹

这些行动似乎彰显了欧盟计划根据《2016年欧盟对华战略》的规定，只有在中国将其全球倡议成为“遵守市场规则和国际规范的开放平台，让各方受惠”之后，才与“一带一路”合作。³²这从提到联合国的支柱（即人权、和平与安全、发展）和关于应对气候变化的《巴黎协定》就可以看出这一点。此外，《2019年欧盟对华展望》提到了《2018年欧盟对亚洲战略》（见表4），这清楚地表明，可被视为“一带一路”替代方案的欧盟计划仍然是优先。

意大利与“一带一路”

在上述欧盟-中国关系的背景下，意大利于2019年3月23日加入“一带一路”，这是意大利总理赴北京出席首届“一带一路”国际合作论坛之后的两年。³³意大利参与“一带一路”有其重要性，因为该国是首个正式支持中国全球计划的七国集团成员。

领域	序号	具体行动
与中国合作支持有效的多边主义和应对气候变化	1	欧盟将加强与中国的合作，以履行联合国三大支柱（人权、和平与安全、发展）下的共同责任。
	2	为了更有效地应对气候变化，欧盟呼吁中国在2030年之前达到其排放峰值，以符合《巴黎协定》（关于气候变化）的目标。
致力于国际和平、安全和可持续发展的经济	3	欧盟在伊朗《联合全面行动计划》的积极合作基础上，将深化与中国在和平与安全方面的参与。
	4	为了保持其对伙伴国家的稳定、可持续经济发展与良好治理的关注，欧盟将更有力地应用现有双边协议与金融工具，并通过执行《2018年欧盟对亚洲战略》与中国合作遵循同样原则。
实现更加平衡和互惠的贸易与投资关系	5	为了实现更加平衡与互惠的经济关系，欧盟呼吁中国履行现有的欧中联合承诺。这包括改革WTO，特别是在补贴和强制性技术转让方面，并在2020年达成双边投资协定，尽快就地理标志达成双边协定，以及在未来几周内就航空安全达成双边协定。
	6	为促进互惠和开拓在华的采购机会，欧洲议会和欧洲理事会应在2019年底之前批准国际采购文件。
加强联盟的竞争力并确保公平的竞争环境	7	为确保不仅考虑价格而且考虑高水平的劳工和环境标准，委员会将在2019年中期之前公布外国投标人和货物参与欧盟采购市场的指导意见。委员会将与成员国一起探讨当前框架的实施情况，以便在2019年底之前确定不足之处。
	8	为了充分解决外国国有制和国有融资对内部市场的扭曲影响，委员会将在2019年底之前确定如何填补欧盟法律中的现有缺口。
加强关键基础设施和技术基础的安全性	9	为了提防对关键数字基础设施的潜在严重安全影响，需要对5G网络安全采用一个欧盟的共同方法。为了启动这一行动，欧洲委员会将根据欧洲理事会的决定发布建议书。
	10	为了发现并提高认识外国投资对关键资产、技术和基础设施构成的安全风险，欧盟成员国应确保迅速、全面和有效地实施外国直接投资审查制度。

表4：《2019年欧盟对华展望》

但是，意大利和中国之间的合作并不新鲜。自2013年以来，两国一直在加强经济和政治联系，而同时，如上所述，整个欧盟为与中国的合作设定了限制。例如，2014年，两国建立了中意宁波生态园。³⁴截至2018年第一季度，该园已吸引了16个工业项目和30亿元人民币的投资。³⁵为鼓励创新，两国还签署了《中意关于加强经贸、文化和科技合作的行动计划（2017年—2020年）》。³⁶

为什么意大利违背欧盟的总体趋势，持续与中国建立牢固的关系乃至加入“一带一路”？以下部分分析了意大利成为“一带一路”成员国的主要驱动因素，以及意大利和中国将从概述了他们“一带一路”合作计划的谅解备忘录中可能获得的利益。³⁷

1. 意大利成为“一带一路”成员国的主要驱动因素

意大利加入“一带一路”的决定在很大程度上是因为该国尝试寻找出路来克服其当前的经济和治理挑战。

自2001年以来，意大利的平均国内生产总值（“GDP”）增长率为0.25%，而欧盟的平均增长率为1.7%。³⁸特别是自2008年全球经济衰退以来，意大利经历了三重跌势，给该国造成了沉重打击。工业生产急剧下降，总体失业率飙升至两位数。³⁹更糟糕的是，该国在2018年再次陷入衰退，预计2019年GDP将下降0.2%。⁴⁰

这些经济挑战引发了治理问题。在资源匮乏的情况下，政府无法改善基础设施或提供优质的公共服务。⁴¹过去十年中的低水平投资引起了人们对意大利基础设施质量的极大担忧。⁴²热那亚的莫兰迪（Morandi）公路桥于2018年8月垮塌，造成了43人死亡、600人无家可归。这是意大利目前与基础设施相关的挑战的悲惨例子。⁴³

意大利一直无法获得欧盟的援助。这促使意大利转向中国，并把握习近平主席对意大利进行国事访问的机会，于2019年3月正式加入“一带一路”。⁴⁴

2. 中意谅解备忘录：中意两国将获得什么？

通过参考两项重要的欧盟政策（即《中欧合作2020战略规划》和《2018年欧盟对亚洲战略》）和具有全球重要性的国际协议（例如，《联合国宪章》、《2030年可持续发展议程》和针对气候变化的《巴黎协定》）等文件，谅解备忘录努力在意大利对欧盟和世界的义务与其计划从参与“一带一路”所得的益处两者之间取得平衡。

例如，谅解备忘录特别指出“双方将在[“一带一路”倡议]下共同努力，牢记中欧互联互通平台上的讨论”。如上所述，《2016欧盟对华战略》规定，欧盟应将该平台用作其“与中国合作的主要工具”。⁴⁵谅解备忘录阐释道，意大利计划与中国共同致力于“在一个

有利于所有人的开放、包容和平衡的框架内加强合作并促进区域互联互通”（强调后加）。这些被强调的特质能够使意大利加入“一带一路”后而不会疏远欧盟所设计的平台。此外，有一点提到谅解备忘录下的合作不仅要符合国内法，而且还要遵守各方的国际义务。⁴⁶这与《2016欧盟对华战略》中提醒欧盟成员国其与中国的交往必须遵守欧盟法律、法规和政策的内容是一致的。⁴⁷

阐明上述原则之后，两国进一步在谅解备忘录中确认了合作领域，包括“人与人之间的联系”、“绿色发展合作”、“运输，物流和基础设施”、“畅通无阻的贸易和投资”和“金融合作”。考虑到该国决定加入中国这一倡议的主要驱动因素（见上文），针对后三项合作领域的承诺在不久的将来可能对意大利最为重要。以下各段讨论了意大利和中国如何能在这些合作领域中互利共赢。

(1) 运输、物流和基础设施

以意中联合项目形式进行的基础设施互联互通合作，使意大利的基础设施得到改善，这会为意大利带来巨大利益。对于那些想进入欧洲市场的人来说，意大利港口是重要的门户。为了促进包括意大利港口在内的海上贸易路线的多边运输和海关合作，海上丝绸之路港口合作机制已经建立了。⁴⁸中国外交部国际经济司副司长郭学军指出，除运输和海关合作外，该机制还将“在不同国家的港口建立新技术、新产业和新业务形式，以促进海上丝绸之路沿线的科学研究和技术合作。”⁴⁹

关于中国将如何受益，曾于1999年至2004年担任欧盟委员会主席的意大利政治家罗曼诺·普罗迪（Romano Prodi）指出，地理位置优越的意大利港口对中国具有价值，这些港口的发展对两国都有好处。⁵⁰意大利地处地中海中部，且可以提供苏伊士运河和中欧之间最短的路线，这使得意大利的港口、公路和铁路网成为中国商品通过欧洲大陆南部门户到达欧洲的理想渠道。⁵¹

(2) 贸易和投资的畅通

扩张的投资和贸易流量以及“一带一路”下增加的工业合作可以帮助改善意大利经济。其中显而易见的效益之一就是意大利参与“一带一路”后流向本国的投资资金。例如，中国投资公司将通过新成立的中意工业合作基金为意大利企业提供资金支持，并增加对该国的工业投资。⁵²透明、非歧视和公开的采购也将确保合格的意大利公司将能够参与与“一带一路”相关的项目。

中国经济也将得益。意大利经济发展部副部长迈克·杰拉奇（Michele Geraci）指出，中意两国在农业、食品、环境和数字经济领域的合作前景广阔，这源于两国共享高度互补的产业。⁵³例如，意大利的制造业

（包括加工和农机产品）享有很高的声誉，而中国在数字移动支付方面则很先进。⁵⁴中国外交部长王毅认同中意经济具有高度互补性。他表示，深化制造业、农业和创新领域的合作将为两国的商界和人民带来切实的利益。⁵⁵

最后，谅解备忘录特别强调了公平竞争和尊重知识产权将有助于确保合作互利。这两方面均与《2016欧盟对华战略》（见表3）和《2019年欧盟对华展望》（见表4）一致。优先考虑这些目标也可以缓解欧盟和其他国家对中国在这些领域中所作的承诺的担忧。

(3) 金融合作

谅解备忘录指出，中国和意大利将在“财政、金融和结构改革政策”方面进行合作，同时还宣布两国财政部将作出对话。⁵⁶就在谅解备忘录签署和第二届“一带一路”国际合作论坛在北京举行的几个月后，第一届意中金融对话（“2019年意中金融对话”）于2019年7月在罗马举行。⁵⁷在此会议中，双方签署了旨在建立两国出口信贷机构与领先企业和金融机构之间的合作机制的协议，以及有助于向第三方市场提供针对性的融资和保险解决方案的协议。⁵⁸此前，于2019年3月，意大利投资银行Cassa depositi e prestiti与中国银行签署一项交易，该交易制定了价值50亿元人民币的“熊猫债券”发行计划，以支持意大利公司在中国市场的发展。⁵⁹

对于中国而言，意大利参加“一带一路”为中国打开了通向意大利本国、更大的欧盟市场甚至其他地区（如非洲）的大门。在2019年意大利-中国金融对话结束时，中国与意大利就“加强金融市场合作，促进双向市场准入，支持其合格的金融机构在彼此市场扩展业务”达成了协议，从而加强了进入意大利市场的渠道。⁶⁰如上所述，意大利的运输网络也是通向欧洲贸易的理想渠道，随着“一带一路”下与意大利的合作不断扩大，中国可以充分利用该渠道。⁶¹最后，鉴于意大利与非洲紧密的历史联系和靠近非洲的地理位置，可以合理地预期在一些非洲国家的“一带一路”项目中，中国和意大利会开展合作。⁶²

结语：意大利会成为潮流引领者吗？

环顾四周对中国全球视野的怀疑，⁶³意大利的例子正说明了一个欧洲国家如何能从加入“一带一路”中受益。“一带一路”的目标足够广泛，可以与一个有着特别需求、且与中国有着截然不同历史的国家共享。如果意大利能够履行其“一带一路”义务，而又不损害该国对欧盟和世界其他国家的义务，那么该国将证明自己是近代历史上最具变革性的倡议之一的引领者。作者认为，如果中国能够在不久的将来取得以下三项成就，那么这种可能性更大：

- 证明“一带一路”是一项基于规则的倡议，且与公认的国际组织和重要的国际原则兼容。

中国和意大利的“一带一路”合作有潜力支持基于规则的国际经济体系和总体上加强多边主义。在2019年意大利-中国金融对话中，意大利和中国同意通过坚持和支持世贸组织、二十国集团、国际货币基金组织和多边开发银行（例如，世界银行和在“一带一路”中发挥着重要作用的亚投行）来“促进开放世界经济和可持续发展”。⁶⁴

如果能表明“一带一路”与这些公认机构保持一致，并且可以按照与《联合国宪章》所载原则和那些寻求实现可持续和绿色发展的原则相一致的原则加以实施，那么其他欧盟国家加入“一带一路”的决定将受到较少的监察。特别是就后者而言，尽管中意谅解备忘录提到了关于气候变化的《巴黎协定》，但中国此前曾强调“共同但有区别的责任”原则——其平衡了两点：既需要所有国家对全球环境问题承担责任，也承认不同国家有不同的经济发展水平——的重要性。⁶⁵ 中国将需要谨慎处理对两方面的关注：这是否意味着对实现国际排放目标的承诺不足，以及“一带一路”发展对气候变化的总体影响。⁶⁶

- 证明欧盟成员可以加入“一带一路”，并且仍然遵守欧盟法律、法规和政策。

所有国家都根据其国内需求做出决定，但是必须始终考虑区域性的关注，尤其是当该国家是欧盟等区域组织的成员时。如上所述，《2016欧盟对华战略》明确规定：“欧盟

成员国的参与必须遵守欧盟法律、法规和政策”。⁶⁷ 这不仅适用于欧盟成员国与中国的合作，也适用于他们对“一带一路”等倡议的参与。如果意大利（和其他欧盟成员）可以证明他们在“一带一路”下与中国的合作跟欧盟的政策和义务不冲突，那么更多的欧盟成员国可能会表现出更强的意愿加入“一带一路”。

- 超越高级别对话，强调已加入“一带一路”的国家在实地取得的实际成果。

作为第一个加入“一带一路”的七国集团国家，意大利的参与对全球性倡议本身意义重大。牛津大学全球历史学教授彼得·弗兰科潘（Peter Frankopan）指出，意大利的举动“具有很大的象征意义”，“为现有计划增添了光彩，也表明中国有其重要的全球角色”。⁶⁸ 但是，要使“一带一路”成为其他欧盟成员国（以及世界其他国家）的真正选择，中国必须摆脱象征意义，而侧重于该倡议可以给意大利等在实地面临严峻挑战的国家带来的实际利益。

《中国法律连接》未来出版的期刊将专注于中国是否能够实现上述三项成就，以及追踪其他欧盟国家对“一带一路”的兴趣和/或其在该倡议的参与的演变。如果中国根据谅解备忘录履行对意大利的承诺，而意大利的利益确实超过了该国本身和国际社会的担忧，那么更多的欧盟成员国可能会效仿意大利的榜样，参与中国的全球计划。由此，一个新的世界秩序可能会出现。■

* 此中法连接^聚的引用是：英珍妮、李雪皎，中国“一带一路”倡议：意大利的参与会激发更多的欧盟追随者吗？，《中国法律连接》，第6期，第55页（2019年9月），亦见于斯坦福法学院中国指导性案例项目，中法连接^聚，2019年9月，<http://cgc.law.stanford.edu/zh-hans/cle-spotlight/cle-6-201909-band-4-ingram-li>。作者感谢池田健太郎和Swechhya Sangroula对本文草稿的评论，并感谢Gloria Donati、Dionysios Kaskarelis和Vera Piovesan协助根据意大利官方资料核实事实。英文原文由Nathan Harpainter和熊美英博士编辑。本中文版本由黄莉莎、李雪皎、马金仪、秦正、张海韵和周子皓翻译，并由李雪皎和熊美英博士最后审阅。载于本文的信息和意见作者对其负责，它们并不一定代表中国指导性案例项目的工作或意见。

¹ 促进亚洲、欧洲和非洲国家之间联系的这一总体目标贯穿于描述了中国对该倡议的愿景的第一份官方文件中。《推动共建丝绸之路经济带和21世纪海上丝绸之路的愿景与行动》，2015年3月28日由国家发展改革委、外交部、商务部（经国务院授权）联合发布，<https://www.yidaiyilu.gov.cn/wcm.files/upload/CMSydy/gw/201702/201702070519013.pdf>。

² 见，例如，Xi's Fruitful Visits Boost Partnership with Europe, CHINA DAILY, 2019年3月27日，<http://www.chinadaily.com.cn/a/201903/27/WS5c9b74a6a3104842260b2ef2.html>。

³ 16+1机制所包括的16个欧洲国家是阿尔巴尼亚、波斯尼亚和黑塞哥维那、保加利亚、克罗地亚、捷克共和国、爱沙尼亚、匈牙利、拉脱维亚、立陶宛、马其顿、黑山、波兰、罗马尼亚、塞尔维亚、斯洛伐克共和国和斯洛文尼亚。有关更多信息，见<http://www.china-ceec.org/eng>。

⁴ 见The Third Wave of Establishing Diplomatic Relations with Other Countries, https://www.fmprc.gov.cn/mfa_eng/ziliao_665539/3602_665543/3604_665547/t18014.shtml。

⁵ Sixth China-EU Summit — Beijing, 30 October 2003 — Joint Press Statement, 2003年10月30日, 13424/03 (Presse 298), https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/er/77802.pdf。

⁶ Commission of the European Communities, Commission Policy Paper for Transmission to the Council and the European Parliament, *A Maturing Partnership—Shared Interests and Challenges in EU-China Relations*, 2003年9月10日, COM(2003) 533 final, <https://ec.europa.eu/transparency/regdoc/rep/1/2003/EN/1-2003-533-EN-F1-1.Pdf>。

⁷ 见 Commission of the European Communities, Communication from the Commission, *Building a Comprehensive Partnership with China*, 1998年3月25日, COM(1998) 181 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1998:0181:FIN:EN:PDF>; Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, *EU Strategy Towards China: Implementation of the 1998 Communication and Future Steps for a More Effective EU Policy*, 2001年5月15日, COM(2001) 265 final, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0265:FIN:EN:PDF>。

⁸ *China's EU Policy Paper — October 2003*, 2003年10月13日, https://www.fmprc.gov.cn/mfa_eng/wjb_663304/zjjg_663340/xos_664404/dqzyztw_664812/t27708.shtml。

⁹ 从2002年到2012年，欧盟-中国贸易总额从1250亿欧元增加到约4340亿欧元。尤其是欧盟对中国的贸易逆差从550亿欧元增加到1460亿欧元，这表明欧盟消费者对中国产品的偏爱，以及欧盟市场对中国出口商的重要性日益提高。Nicola Casarini, *The EU-China Partnership: 10 years on*, Brief Issue 35 (2013年10月), European Union Institute for Security Studies, 第3页, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Brief_35_EU-China_relations.pdf (引用欧盟统计局的数字)。

¹⁰ *EU-China 2020 Strategic Agenda for Cooperation*, 2013年11月23日, <https://eeas.europa.eu/sites/eeas/files/20131123.pdf>。关于《中欧合作2020战略规划》中文全文，见第十六次中欧领导人会晤发表《中欧合作2020战略规划》，《中央政府门户网站》，2013年11月23日, http://www.gov.cn/jrzq/2013-11/23/content_2533293.htm。

¹¹ 见《推动共建丝绸之路经济带和21世纪海上丝绸之路的愿景与行动》，注释1。

¹² *President Xi Jinping Delivers Important Speech and Proposes to Build a Silk Road Economic Belt with Central Asian Countries*, 2013年9月7日, https://www.fmprc.gov.cn/mfa_eng/topics_665678/xjpfwzysiesjgthshzzfh_665686/t1076334.shtml。

¹³ *China's Policy Paper on the EU: Deepen the China-EU Comprehensive Strategic Partnership for Mutual Benefit and Win-Win Cooperation*, 2014年4月2日, https://www.fmprc.gov.cn/mfa_eng/wjdt_665385/wjzcs/t1143406.shtml。亦见深化互利共赢的中欧全面战略伙伴关系——中国对欧盟政策文件（全文），《新华网》，2014年4月2日, http://www.xinhuanet.com/world/2014-04/02/c_1110054550.htm。

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- ²² Thilo Hanemann, Mikko Huotari, Agatha Kratz, 注释15。
- ²³ European Commission, High Representative of the Union for Foreign Affairs and Security Policy, Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank, *Connecting Europe and Asia – Building Blocks for an EU Strategy*, 2018年9月19日, JOIN(2018) 31 final, https://eeas.europa.eu/sites/eeas/files/joint_communication_-_connecting_europe_and_asia_-_building_blocks_for_an_eu_strategy_2018-09-19.pdf.
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- ⁴¹ 同上, 第3-4页。
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- ⁴⁶ *Memorandum of Understanding*, 注释37, 第I.2 (ii)款。
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- ⁴⁸ 在2018年4月25日至27日于北京举行的第二届“一带一路”国际合作论坛上, 中国和33位政府运输和海关部门、重点港口企业、港口主管部门和终端运营商的代表一起共同建立海上丝绸之路港口合作机制, 发布《宁波海上丝绸之路港口合作倡议》。这些代表来自意大利、斯里兰卡、阿拉伯联合酋长国、拉脱维亚、斯洛文尼亚、比利时、西班牙、斐济、荷兰、丹麦、罗马尼亚和新加坡。 *List of Deliverables of the Second Belt and Road Forum for International Cooperation*, 2019年4月27日, https://www.fmprc.gov.cn/mfa_eng/zxxx_662805/t1658767.shtml。
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- ⁵⁶ *Memorandum of Understanding*, 注释37, 第II.4款。
- ⁵⁷ 关于第二届“一带一路”国际合作论坛的更多信息, 见<http://www.xinhuanet.com/english/special/2019ydyforum/index.htm>。
- ⁵⁸ 意大利的私人银行集团Unicredit和出口保险机构Servizi Assicurativi del Commercio Estero分别与中国进出口银行签署了协议, 而意大利的保险监管机构(保险监督协会)则与中国银行保险监督管理委员会签署了协议。 *Italy, China Pledge to Deepen Cooperation, Support Multilateralism*, XINHUA, 2019年7月11日, http://www.xinhuanet.com/english/2019-07/11/c_138218353.htm。
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- ⁶⁷ *Elements for a new EU Strategy on China*, 注释18, 第5页。
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The CGCP's Call for Experts *Connect*TM Submissions

The China Guiding Cases Project (the “CGCP”) of Stanford Law School has been tracking new developments that reveal China’s changing place in the world. In June 2018, the CGCP launched *China Law Connect* (“CLC”; ISSN 2576-1927 (print), 2576-1935 (online)), a bilingual quarterly journal with a focus on providing cutting edge and practical analyses of legal developments in China and the country’s Belt and Road Initiative.

Building on the successful launch of *CLC*, the CGCP is committed to publishing in 2019 an expanded range of in-depth traditional commentaries, China Cases *Insights*TM, and Experts *Connect*TM pieces that highlight the most up-to-date issues related to China and Chinese law. To this end, we announce a **Call for Experts *Connect*TM Submissions** on any of the following topics:

- any Guiding Case that has been released by the Supreme People’s Court of China;
- artificial intelligence and law;
- the establishment of international commercial courts in China;
- U.S.–China trade developments;
- the new U.S.–Mexico–Canada Trade Agreement; and
- the Belt and Road Initiative, specifically, case studies illustrating successful “win-win” cooperation.

Given the significance of the above-mentioned developments, the CGCP welcomes submissions (ranging from 1,500 to 3,500 words, in English or Chinese, plus, if necessary, approximately 500 to 1,000 words for well-formatted footnotes) from practitioners and other experts inside and outside China on any of the above topics.

Authors of accepted submissions will receive editorial support from the CGCP and edited versions approved by authors will be published in English and Chinese as part of our Experts *Connect*TM series in a 2019 issue of *China Law Connect*. Among the commentaries featured in the journal, this series is dedicated to the views of Chinese and foreign experts on select legal issues presented for the benefit of legal practitioners, business professionals, and students around the world.

Interested contributors should direct queries, send completed submissions, or propose significant topics not listed above to **Jennifer Ingram, Managing Editor of the CGCP, at jaingram@stanford.edu**. Submissions are accepted on an ongoing basis.

中国指导性案例项目专家 *连接*TM 诚挚邀稿

斯坦福法学院的中国指导性案例项目 (China Guiding Cases Project; “CGCP”) 努力追踪反映中国在上不断变化的地位的新发展。2018年6月, CGCP创办双语季刊《中国法律连接》(*China Law Connect*; “CLC”; ISSN 2576-1927 (印刷版), 2576-1935 (在线版)), 旨在对中国法律发展及“一带一路”倡议提供前沿和实用分析。

在成功推出CLC的基础上, CGCP致力于2019年发布一系列广泛、深入的传统评论、中国案例 *见解*TM 及专家 *连接*TM 文章, 重点分析与中国和中国法律相关的最新问题。为此, 我们宣布 **专家 *连接*TM 诚挚邀稿**, 涵盖以下主题:

- 任何由中国最高人民法院发布的指导性案例;
- 人工智能与法律;
- 中国国际商事法庭的设立;
- 美中贸易发展;
- 新的美国—墨西哥—加拿大贸易协定;
- “一带一路”倡议, 特别是个案研究, 说明该倡议如何成功实现“双赢”合作。

鉴于上述发展的重要性, CGCP欢迎来自中国国内外的法律执业者与其他专家提交稿件 (1500至3500字, 中英文皆可; 如有必要, 也可附上格式良好、约500至1000字的注释), 探讨以上任何一个主题。

CGCP将为获选稿件的作者提供编辑支持, 编辑后并经作者同意的文章将以中英双语形式发表在我们2019年《中国法律连接》专家 *连接*TM 系列专栏。作为《中国法律连接》中评论性文章的一部分, 该系列专供中外专家就某些法律问题发表观点, 让世界各地的法律从业人员、商业专业人士和学生能从中受益。

有兴趣的投稿者, 请把查询、完整的稿件、或对以上未列出的重要主题的建议, 发送至CGCP执行编辑英珍妮女士, jaingram@stanford.edu。我们持续接受投稿。

Submission Guidelines

China Law Connect (“CLC”) is a quarterly journal of the China Guiding Cases Project (the “CGCP”) of Stanford Law School aimed at advancing the understanding of Chinese law and increasing judicial transparency and accountability in China.

CLC welcomes submissions for publication in the following forms:

1. Traditional commentaries
2. China Cases *Insights*TM
3. Experts *Connect*TM

Submissions should satisfy the corresponding guidelines summarized here. For details, see <https://cgc.law.stanford.edu/clc-submission-guidelines>.

1. **Traditional commentaries**, which are usually longer and provide in-depth and/or extensive contributions to scholarship on China’s Case Guidance System, the Belt & Road Initiative, and/or other matters related to China or Chinese law:
 - Typically 6,000–8,000 words, generally structured as called for by the substance (e.g., section headings, with one or two levels of subsection headings).
2. **China Cases *Insights*TM**, a series which aims at providing legal and business professionals with concise and practical information, as well as insightful analyses and indispensable takeaways, about cases in or related to China to help these professionals in their practice of law and business:
 - Generally narrower than traditional commentaries in scope, dealing with only one or a handful of legal case(s)—usually only some issues therein—framed in a set structure comprised of “The Takeaway” (approx. 100 words), “The Rundown” (up to 500 words), “The Breakdown” (up to 2,500 words), and “The Conclusion” (up to 250 words).
3. **Experts *Connect*TM**, a series dedicated to the views of Chinese and foreign experts on select legal issues presented for the benefit of legal practitioners, business professionals, and students around the world:
 - Submissions (ranging from 1,500 to 3,500 words, in English or Chinese, plus, if necessary, approximately 500 to 1000 words for well-formatted footnotes) in response to a specific CGCP call for submissions (for details, please visit: <https://cgc.law.stanford.edu/event/clc-2019-call-for-submissions>) as well as submissions initiated by any expert are welcome.

投稿指引

《中国法律连接》(“《中法连》”)是斯坦福法学院中国指导性案例项目(“CGCP”)的季刊。该刊旨在促进对中国法律的理解,提高中国司法透明度和问责。

《中法连》欢迎您投稿让我们以如下形式出版:

1. 传统评论
2. 中国案例 *见解*TM
3. 专家 *连接*TM

投稿需符合下列指引。详情请见 <https://cgc.law.stanford.edu/zh-hans/clc-submission-guidelines>。

1. **传统评论**。这些文章通常篇幅较长、更深入地探讨中国案例指导制度、一带一路倡议和其他与中国或中国法律相关的专题:
 - 篇幅一般为6000–8000字,围绕文章内容进行结构布局(例如,标题下分一至两级副标题)。
2. **中国案例 *见解*TM**。该系列旨在为法律和商业专业人士提供关于中国案例的简明实用信息、有见地的分析和不可或缺的要点,从而帮助这些专业人士的法律和商业实践:
 - 内容范围一般比传统评论小,仅讨论一个或几个法律案例(通常只是针对案例里的某些问题),文章结构设定为“要点”(约100字)、“概要”(500字内)、“分析”(2500字内)和“结论”(250字内)。
3. **专家 *连接*TM**。该系列专供中外专家就某些法律问题发表观点,让世界各地的法律从业人员、商业专业人士和学生能从中受益:
 - 投稿内容(1,500至3,500字,中英文皆可;如有必要,也可附上格式良好、约500至1000字的脚注)可以回应CGCP的特定邀稿(详情请访问:<https://cgc.law.stanford.edu/zh-hans/event/clc-2019-call-for-submissions>),也欢迎专家们自主撰文投稿。

浙江隆达不锈钢有限公司诉
A.P.穆勒-马士基有限公司
海上货物运输合同纠纷案

Zhejiang Longda Stainless Steel Co., Ltd.
v.
A.P. Møller - Mærsk A/S,
A Dispute over a Contract for the
Carriage of Goods by Sea

指导案例108号
(最高人民法院审判委员会
讨论通过
2019年2月25日发布)*

Guiding Case No. 108
(Discussed and Passed by the Adjudication
Committee of the Supreme People's Court
Released on February 25, 2019)**

关键词

民事
海上货物运输合同
合同变更
改港
退运
抗辩权

Keywords

Civil
Contract for the Carriage of Goods by Sea
Changes to a Contract
Change a Port [of Destination]
Return a Shipment
Right of Defense

裁判要点

在海上货物运输合同中，依据合同法第三百零八条的规定，承运人将货物交付收货人之前，托运人享有要求变更运输合同的权利，但双方当事人仍要遵循合同法第五条规定的公平原则确定各方的权利和义务。托运行行使此项权利时，承运人也可相应行使一定的抗辩权。如果变更海上货物运输合同难以实现或者将严重影响承运人正常营运，承运人可以拒绝托运人改港或者退运的请求，但应当及时通知托运人不能变更的原因。

Main Points of the Adjudication

According to Article 308 of the *Contract Law [of the People's Republic of China]*, in a contract for the carriage of goods by sea, before a carrier has delivered [certain] goods to a receiver,¹ a consignor has the right to demand changes to the carriage contract. The two parties, however, still need to follow the principle of fairness as stated in Article 5 of the *Contract Law* to determine their respective rights and obligations. When the consignor exercises the right [to demand changes], the carrier may also accordingly exercise a right of defense. If a change to a contract for the carriage of goods by sea is difficult to achieve or will seriously affect the normal operation of the carrier, the carrier may refuse the consignor's request to change the port [of destination] or to return the shipment. However, [the carrier] should notify the consignor, in a timely manner, of the reasons for not being able to make the change.

相关法条

《中华人民共和国合同法》第308条²

《中华人民共和国海商法》第86条⁴

Related Legal Rule(s)

Article 308 of the *Contract Law of the People's Republic of China*³

Article 86 of the *Maritime Law of the People's Republic of China*⁵

基本案情

2014年6月，浙江隆达不锈钢有限公司（以下简称隆达公司）由中国宁波港出

Basic Facts of the Case

In June 2014, Zhejiang Longda Stainless Steel Co., Ltd.⁶ (hereinafter referred to as "Longda Company") exported a batch of seamless stainless

口一批不锈钢无缝产品至斯里兰卡科伦坡港, 货物报关价值为366918.97美元。隆达公司通过货代向A.P.穆勒—马士基有限公司(以下简称马士基公司)订舱, 涉案货物于同年6月28日装载于4个集装箱内装船出运, 出运时隆达公司要求做电放处理。2014年7月9日, 隆达公司通过货代向马士基公司发邮件称, 发现货物运错目的地要求改港或者退运。马士基公司于同日回复, 因货物距抵达目的港不足2天, 无法安排改港, 如需退运则需与目的港确认后回复。次日, 隆达公司的货代询问货物退运是否可以原船带回, 马士基公司于当日回复“原船退回不具有操作性, 货物在目的港卸货后, 需要由现在的收货人在目的港清关后, 再向当地海关申请退运。海关批准后, 才可以安排退运事宜”。2014年7月10日, 隆达公司又提出“这个货要安排退运, 就是因为清关清不了, 所以才退回宁波的, 有其他办法吗”。此后, 马士基公司再未回复邮件。

涉案货物于2014年7月12日左右到达目的港。马士基公司应隆达公司的要求于2015年1月29日向其签发了编号603386880的全套正本提单。根据提单记载, 托运人为隆达公司, 收货人及通知方均为VENUS STEEL PVT LTD, 起运港中国宁波, 卸货港科伦坡。2015年5月19日, 隆达公司向马士基公司发邮件表示已按马士基公司要求申请退运。马士基公司随后告知隆达公司涉案货物已被拍卖。

裁判结果

宁波海事法院于2016年3月4日作出(2015)甬海法商初字第534号民事判决,¹²认为隆

steel products from the port of Ningbo, China,⁷ to the port of Colombo, Sri Lanka.⁸ The customs value of the goods was USD 366,918.97. Longda Company, through a freight forwarder, booked shipping space with A.P. Møller - Mærsk A/S⁹ (hereinafter referred to as “Maersk Company”). On June 28 of the same year, the goods involved in the case were put inside four containers and loaded on board [a ship] for shipping. When the goods were about to be shipped, Longda Company requested “telex release”¹⁰ treatment.

On July 9, 2014, Longda Company, through a freight forwarder, sent an email to Maersk Company, stating that it was discovered that the goods were being sent to the wrong destination and [Longda Company] demanded that the port [of destination] be changed or the shipment be returned. Maersk Company replied on the same day, [explaining] that because the goods would arrive at the port of destination in less than two days, it was not possible to arrange a change of the port [of destination] and, if the shipment had to be returned, [Maersk Company] had to confirm with the port of destination and then reply.

The following day, Longda Company's freight forwarder inquired whether the goods to be returned could be brought back by the original ship. Maersk Company replied that day:

Return by the original ship is not practical. After the goods are unloaded at the port of destination, they need to be cleared through customs by the current receiver at the port of destination. Then, an application for the return of the shipment [should] be made to customs there. The return of the shipment can only be arranged after customs approves.

On July 10, 2014, Longda Company further wrote:

The return of the goods needs to be arranged precisely because customs clearance for [the goods] will not be possible. Thus, they need to be returned to [the port of] Ningbo. Are there other methods?”

Thereafter, Maersk Company did not reply.

Around July 12, 2014, the goods involved in the case arrived at the port of destination. On January 29, 2015, at the request of Longda Company, Maersk Company signed and issued [to Longda Company] the complete original bill of lading numbered 603386880. As recorded on the bill of lading, the consignor was Longda Company, the receiver and the notify party¹¹ were both VENUS STEEL PVT LTD, the port of departure was [the port of] Ningbo, China, and the port of discharge was the port of Colombo.

On May 19, 2015, Longda Company sent an email to Maersk Company, stating that it had already applied, in accordance with Maersk Company's requirements, for return of the shipment. Maersk Company then notified Longda Company that the goods involved in the case had already been auctioned off.

Results of the Adjudication

On March 4, 2016, the Ningbo Maritime Court rendered the (2015) Yong Hai Fa Shang Chu Zi No. 534 Civil Judgment,¹⁶ opining that because

该公司因未采取自行提货等有效措施导致涉案货物被海关拍卖，相应货损风险应由该公司承担，故驳回隆达公司的诉讼请求。一审判决后，隆达公司提出上诉。浙江省高级人民法院于2016年9月29日作出（2016）浙民终222号民事判决：¹³撤销一审判决；马士基公司于判决送达之日起十日内赔偿隆达公司货物损失183459.49美元及利息。二审法院认为依据合同法第三百零八条，隆达公司在马士基公司交付货物前享有请求改港或退运的权利。在隆达公司提出退运要求后，马士基公司既未明确拒绝安排退运，也未通知隆达公司自行处理，对涉案货损应承担相应的赔偿责任，酌定责任比例为50%。马士基公司不服二审判决，向最高人民法院申请再审。¹⁴最高人民法院于2017年12月29日作出（2017）最高法民再412号民事判决：¹⁵撤销二审判决；维持一审判决。

裁判理由²⁰

最高人民法院认为，²² 合同法与海商法有关调整海上运输关系、船舶关系的规定属于普通法与特别法的关系。根据海商法第八十九条的规定，船舶在装货港开航前，托运人可以要求解除合同。本案中，隆达公司在涉案货物海上运输途中请求承运人进行退运或者改港，因海商法未就航程中托运人要求变更运输合同的权利进行规定，故本案可适用合同法第三百零八条关于托运人要求变更运输合同权利的规定。基于特别法优先适用于普通法的法律适用基本原则，合同法第三百零八条规定的是一般运输合同，该条规定在适用于海上货物运输合同的情况下，应该受到海商法基本价值取向及强制性规定的限制。托运人依据合同法第三百零八条主张变更运输合同的权利不得致使海上货物运输合同中各方当事人利益显失公平，也不得使承运人违反对其他托运人承担的安排合理航线等义务，或剥夺承运人关于履行海上货物运输合同变更事项的相应抗辩权。²³

Longda Company did not take effective measures, including picking up the goods by itself, leading to the goods involved in the case being auctioned off by customs, the corresponding risk of loss of goods should be borne by the company. Therefore, [the court] rejected the litigation requests of Longda Company. After the first-instance judgment [was rendered], Longda Company appealed.

On September 29, 2016, the High People's Court of Zhejiang Province rendered the (2016) Zhe Min Zhong No. 222 Civil Judgment:¹⁷ [the court] revokes the first-instance judgment; and [the court orders] Maersk Company to pay, within ten days of the delivery of the judgment, Longda Company USD 183,459.49 as compensation for the loss of the goods, plus interest. The second-instance court opined that according to Article 308 of the *Contract Law*, before the goods had been delivered by Maersk Company, Longda Company had the right to request that the port [of destination] be changed or the shipment be returned. After Longda Company demanded the return of the shipment, Maersk Company neither explicitly refused to arrange the return of the shipment nor notified Longda Company [of the need for Longda Company] to handle [the goods] itself. [Therefore,] Maersk Company should bear the corresponding liability for [paying] compensation for the loss of the goods involved in the case, and the proportion of liability was determined [by the court], in its discretion, to be 50%.

Unconvinced by the second-instance judgment, Maersk Company applied to the Supreme People's Court for a retrial.¹⁸ On December 29, 2017, the Supreme People's Court rendered the (2017) Zui Gao Fa Min Zai No. 412 Civil Judgment:¹⁹ [the court] revokes the second-instance judgment; [the court] upholds the first-instance judgment.

Reasons for the Adjudication²¹

The Supreme People's Court opined:²⁴ the relationship between the provisions of the *Contract Law* and the *Maritime Law* concerning the regulation of relationships in carriage by sea and [the regulation of relationships between] ships is a type between a general law and a special law. According to Article 89 of the *Maritime Law*, “[b]efore a ship departs from a port of loading, a consignor may demand rescission of the contract [for the carriage of goods by sea].”

In this case, while the goods involved were being carried by sea, Longda Company requested that the carrier return the shipment or change the port [of destination]. Because the *Maritime Law* does not have [any] provision on a consignor's right to demand changes to a carriage contract during the voyage, Article 308 of the *Contract Law*, a provision concerning a consignor's right to demand changes to a carriage contract, could be applied to this case.

Article 308 of the *Contract Law* is a provision about carriage contracts of general type. Based on the fundamental application-of-laws principle that the application of a special law takes precedence over that of a general law, when [Article 308] is applied to a contract for the carriage of goods by sea, [the interpretation of Article 308] should be restricted by the basic values embodied in the *Maritime Law* and its mandatory provisions.

[The exercise of] the right to change a carriage contract that a consignor claims [to have], in accordance with Article 308 of the *Contract Law*, shall not cause clear unfairness to the interests of the parties to the contract for the carriage of goods by sea. [Such exercise] shall also not cause the carrier to breach the obligations that it has to other consignors, including [the obligation to] arrange reasonable routes, or deprive the carrier of the corresponding right of defense [in response to a request to] make changes to the contract for the carriage of goods by sea.²⁵

The fundamental principles set forth in the general provisions of the *Contract Law* are the legislative standards of the *Contract Law*. They are standards that are applicable to all areas of the *Contract Law* and are the basis of the specific system and norms of the *Contract Law*. According to Article 308 of the *Contract Law*, before a carrier has delivered [certain] goods to a receiver, a consignor has the right to demand changes to the carriage contract, but the two parties still need to follow the principle of fairness as stated in Article 5 of the *Contract Law* to determine their respective rights and obligations.

The carriage of goods by sea has special characteristics, including large carriage volume, pre-planning of the voyage, and relatively fixed routes. Sometimes, a consignor's demand to change the port [of destination] or request to return the shipment is not only impractical but may also hinder the normal operation of the carrier or bring a fair amount of harm to the consignors or receivers of other goods. Under such circumstances, it is clearly unfair if the carrier is required to unconditionally obey the consignor's request to change the carriage contract. Therefore, in a contract for the carriage of goods by sea, the consignor cannot exercise the right to request changes without restrictions; nor should the carrier, under all circumstance, unconditionally obey the consignor's instructions requesting changes.

In order to reasonably balance the interests of the parties to a contract for the carriage of goods by sea, when a consignor exercises the right to demand changes [to the contract], at the same time, the carrier also accordingly has a right of defense.

If a change to a carriage contract is difficult to achieve or will seriously affect the normal operation of the carrier, the carrier may refuse the consignor's demand to change the port [of destination] or to return the shipment. However, [the carrier] should notify the consignor, in a timely manner, of the reasons for not being able to make the change. If the carrier's defense by way of the reason(s) for not being able to make [the change] stands, it is not improper for the carrier not to follow the consignor's instructions regarding the return of the shipment or the change of the port [of destination].

The goods involved in the case were carried by an international liner. The ship carrying the goods, apart from carrying the four containers consigned by Longda Company, also carried a large number of other goods consigned by owners of those goods. On June 28, 2014, the goods involved in the case were loaded on board [the ship] for shipping. Around July 12, 2014, [the ship] arrived at the port of destination. Longda Company did not demand that Maersk Company return the shipment or change the port [of destination] until July 9, 2014. [By

合同法总则规定的基本原则是合同法立法的准则，是适用于合同法全部领域的准则，也是合同法具体制度及规范的依据。依据合同法第三百零八条的规定，在承运人将货物交付收货人之前，托运人享有要求变更运输合同的权利，但双方当事人仍要遵循合同法第五条规定的公平原则确定各方的权利和义务。海上货物运输具有运输量大、航程预先拟定、航线相对固定等特殊性质，托运人要求改港或者退运的请求有时不仅不易操作，还会妨碍承运人的正常营运或者给其他货物的托运人或收货人带来较大损害。在此情况下，如果要求承运人无条件服从托运人变更运输合同的请求，显失公平。因此，在海上货物运输合同下，托运人并非可以无限制地行使请求变更的权利，承运人也并非在任何情况下都应无条件服从托运人请求变更的指示。为合理平衡海上货物运输合同中各方当事人利益之平衡，在托运行使要求变更权利的同时，承运人也相应地享有一定的抗辩权利。如果变更运输合同难以实现或者将严重影响承运人正常营运，承运人可以拒绝托运人改港或者退运的要求，但应当及时通知托运人不能执行的原因。如果承运人关于不能执行原因等抗辩成立，承运人未按照托运人退运或改港的指示执行则并无不当。

涉案货物采用的是国际班轮运输，载货船舶除运载隆达公司托运的4个集装箱外，还运载了其他货主托运的众多货物。涉案货物于2014年6月28日装船出运，于2014年7月12日左右到达目的港。隆达公司于2014年7月9日才要求马士基公司退运或者改港。马士基公司在航程已过大半，距离到达目的港只有两三天的时间，以航程等

原因无法安排改港、原船退回不具有操作性为抗辩事由，符合案件事实情况，该抗辩事由成立，马士基公司未安排退运或者改港并无不当。²⁶

马士基公司将涉案货物运至目的港后，因无人提货，将货物卸载至目的港码头符合海商法第八十六条的规定。²⁸ 马士基公司于2014年7月9日通过邮件回复隆达公司距抵达目的港不足2日。隆达公司已了解货物到港的大体时间并明知涉案货物在目的港无人提货，但在长达8个月的时间里未采取措施处理涉案货物致其被海关拍卖。隆达公司虽主张马士基公司未尽到谨慎管货义务，但并未举证证明马士基公司存在管货不当的事实。隆达公司的该项主张缺乏依据。依据海商法第八十六条的规定，马士基公司卸货后所产生的费用和 risk 应由收货人承担，马士基公司作为承运人无需承担相应的风险。

then,] the voyage was already more than half-way over and it would only take two to three days for the ship to arrive at the port of destination.

Maersk Company's defense on the grounds that due to the voyage and other reasons, it was not possible to make changes to the port [of destination] and not practical to return [the goods] by the original ship was consistent with the facts of the case. The grounds for the defense [therefore] stood. It was not improper for Maersk Company not to arrange the return of the shipment or the change of the port [of destination].²⁷

After Maersk Company carried the goods involved in the case to the port of destination, it unloaded the goods onto a pier of the port of destination because no one picked up the goods. This conformed to Article 86 of the *Maritime Law*.²⁹

On July 9, 2014, Maersk Company replied by email to Longda Company that [the ship] would arrive at the port of destination in less than two days. Longda Company was [thus] aware of the general time of arrival of the goods and knew that no one would pick up the goods involved in the case at the port of destination. Yet, for eight months, [Longda Company] did not take measures to handle the goods involved in the case, leading to their being auctioned off by customs.

Although Longda Company alleged that Maersk Company had not fulfilled its obligation to carefully handle the goods, it did not adduce evidence to prove that Maersk Company had indeed improperly handled the goods. This allegation of Longda Company lacked [any] basis. Based on Article 86 of the *Maritime Law*, the resulting expenses and risks after Maersk Company unloaded the goods should be borne by the receiver. As the carrier, Maersk Company did not need to bear the corresponding risks.

(生效裁判审判人员：王淑梅、余晓汉、黄西武)

(Adjudication personnel of the effective judgment: WANG Shumei, YU Xiaohan, and HUANG Xiwu)

CGCP 备注

备注1:

《中华人民共和国合同法》

第五条

当事人应当遵循公平原则确定各方的权利和义务。

第三百零八条

在承运人将货物交付收货人之前，托运人可以要求承运人中止运输、返还货物、变更到达地或者将货物交给其他收货人，但应当赔偿承运人因此受到的损失。

CGCP Notes

Note 1:

Contract Law of the People's Republic of China

Article 5

The parties should follow the principle of fairness to determine their respective rights and obligations.

Article 308

Before a carrier has delivered [certain] goods to a receiver, a consignor may demand that the carrier suspend the carriage, return the goods, change the destination, or deliver the goods to another receiver, but [the consignor] should pay the carrier compensation for losses that [the carrier] suffers.

备注2:

《中华人民共和国海商法》

第八十六条

在卸货港无人提取货物或者收货人迟延、拒绝提取货物的，船长可以将货物卸在仓库或者其他适当场所，由此产生的费用和 risk 由收货人承担。

第八十九条

船舶在装货港开航前，托运人可以要求解除合同。但是，除合同另有约定外，托运人应当向承运人支付约定运费的一半；货物已经装船的，并应当负担装货、卸货和其他与此有关的费用。■

Note 2:

Maritime Law of the People's Republic of China

Article 86

Where no one picks up [certain] goods at a port of discharge, or a receiver delays in picking up the goods or refuses to [pick them up], the captain of the ship [carrying the goods] may unload the goods at warehouses or other appropriate places, and the resulting expenses and risks shall be borne by the receiver.

Article 89

Before a ship departs from a port of loading, a consignor may demand rescission of the contract [for the carriage of goods by sea]. However, unless otherwise agreed in the contract, the consignor should pay the carrier half of the agreed freight; and where the goods have already been loaded on board, [the consignor] should bear the expenses for loading and unloading the goods and other related expenses. ■

* 此案例的中文引用是：《浙江隆达不锈钢有限公司诉A.P.穆勒-马士基有限公司海上货物运输合同纠纷案》，《中国法律连接》，第6期，第65页（2019年9月），亦见于斯坦福法学院中国指导性案例项目，中文指导性案例（CGC108），2019年9月，<https://cgclaw.stanford.edu/zh-hans/guiding-cases/guiding-case-108>。

案例原文载于：《最高人民法院网》，<http://www.court.gov.cn/fabu-xiangqing-143382.html>。亦见《最高人民法院关于发布第21批指导性案例的通知》，2019年2月25日公布，同日起施行，<http://www.hncourt.gov.cn/public/detail.php?id=177056>。除非另有说明，否则所有注释和“CGCP备注”均由中国指导性案例项目添加。

** The citation of this translation of this Guiding Case is: 《浙江隆达不锈钢有限公司诉A.P.穆勒-马士基有限公司海上货物运输合同纠纷案》(Zhejiang Longda Stainless Steel Co., Ltd. v. A.P. Moller - Maersk A/S, A Dispute over a Contract for the Carriage of Goods by Sea), 6 CHINA LAW CONNECT 65 (Sept. 2019), also available at STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Case (EGC108), Sept. 2019, <http://cgclaw.stanford.edu/guiding-cases/guiding-case-108>.

The original, Chinese version of this case is available at 《最高人民法院网》(www.court.gov.cn), <http://www.court.gov.cn/fabu-xiangqing-143382.html>. See also 《最高人民法院关于发布第21批指导性案例的通知》(Notice of the Supreme People's Court on the Release of the 21st Batch of Guiding Cases), issued on and effective as of Feb. 25, 2019, <http://www.hncourt.gov.cn/public/detail.php?id=177056>.

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¹ The original text reads “收货人” (“receiver”), which, in the context of the carriage of goods, is the entity that receives goods from a carrier. The receiver of a shipment may or may not be the consignee (“受货人”), which is the entity, shown on the bill of lading, to whom the shipment is consigned. See, e.g., JOHN W. DICKIE, REEDS 21ST CENTURY SHIP MANAGEMENT (Bloomsbury, 2014), at 213, <http://books.google.com/books?isbn=1472900707>.

² 《中华人民共和国合同法》，1999年3月15日通过和公布，1999年10月1日起施行，http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4732.htm。

³ 《中华人民共和国合同法》(Contract Law of the People's Republic of China), passed and issued on Mar. 15, 1999, effective as of Oct. 1, 1999, http://www.npc.gov.cn/wxzl/wxzl/2000-12/06/content_4732.htm.

⁴ 《中华人民共和国合同法》，1992年11月7日通过和公布，1993年7月1日起施行，http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4575.htm。

⁵ 《中华人民共和国合同法》(Maritime Law of the People's Republic of China), passed and issued on Nov. 7, 1992, effective as of July 1, 1993, http://www.npc.gov.cn/wxzl/wxzl/2000-12/05/content_4575.htm.

⁶ The name “浙江隆达不锈钢有限公司” is translated herein as “Zhejiang Longda Stainless Steel Co., Ltd.” in accordance with the English name appearing on the company's website, <http://www.ldpipe.com>.

⁷ The name “中国宁波港” is translated herein as “port of Ningbo, China” in accordance with the English name provided by China's global freight forwarding information center (全球货代信息中心), at <https://www.ufsoo.com/port/ningbo%20pt/>.

⁸ The name “斯里兰卡科伦坡港” is translated herein as “port of Colombo, Sri Lanka” in accordance with the English name provided by Sofreight.com (搜航网), at <http://sofreight.com/ports/lk/lkcol>.

⁹ The name “A.P.穆勒-马士基有限公司” is translated herein as “A.P. Møller - Maersk A/S” in accordance with the English name appearing on the company's website, at <https://www.maersk.com/about>.

¹⁰ The original text reads “电放” (“telex release”), which is a message usually sent via email (versus via Telex, in the past) by an agent at the port of loading to an agent at the port of discharge to indicate that the shipper has surrendered the original bill of lading and the goods covered can be released to the consignee without presentation of the original bill of lading. See, e.g., Hariesh Manaadiar, *What is a Telex Release?*, SHIPPING AND FREIGHT RESOURCE, Aug. 8, 2011, <https://shippingandfreightresource.com/what-is-a-telex-release>.

¹¹ The original text reads “通知方” (“notify party”), which, in the context of the carriage of goods, is the party who must be notified by the carrier of the arrival of the goods so that arrangements can be made to pick up the goods. The notify party may be the consignee, the receiver, or both. See JOHN W. DICKIE, *supra* note 1.

¹² (2015)甬海法商初字第534号民事判决，2016年3月4日由宁波海事法院作出，全文载于斯坦福法学院中国指导性案例项目网站，<http://cgclaw.stanford.edu/zh-hans/judgments/zhejiang-2015-yong-hai-fa-shang-chu-zi-534-civil-judgment>。



- ¹³ (2016) 浙民终222号民事判决, 2016年9月29日由浙江省高级人民法院作出, 全文载于斯坦福法学院中国指导性案例项目网站, <http://cgclaw.stanford.edu/zh-hans/judgments/zhejiang-2016-zhe-min-zhong-222-civil-judgment>.
- ¹⁴ 《中华人民共和国民事诉讼法》第一百九十九条规定, “当事人对已经发生法律效力判决、裁定, 认为有错误的, 可以向上一级人民法院申请再审 [...]。” 见《中华人民共和国民事诉讼法》, 1991年4月9日通过和公布, 同日起施行, 经三次修正, 最新修正于2017年6月27日, 2017年7月1日起施行, http://www.moj.gov.cn/Department/content/2018-12/25/357_182594.html.
- ¹⁵ (2017) 最高法民再412号民事判决, 2017年12月29日由最高人民法院作出, 全文载于斯坦福法学院中国指导性案例项目网站, <http://cgclaw.stanford.edu/zh-hans/judgments/spc-2017-zui-gao-fa-min-zai-412-civil-judgment> (以下简称“《再审判决》”)。
- ¹⁶ (2015) 甬海法商初字第534号民事判决 ((2015) Yong Hai Fa Shang Chu Zi No. 534 Civil Judgment), rendered by the Ningbo Maritime Court on Mar. 4, 2016, full text available on the Stanford Law School China Guiding Cases Project's website, at <http://cgclaw.stanford.edu/judgments/zhejiang-2015-yong-hai-fa-shang-chu-zi-534-civil-judgment>.
- ¹⁷ (2016) 浙民终222号民事判决 ((2016) Zhe Min Zhong No. 222 Civil Judgment), rendered by the High People's Court of Zhejiang Province on Sept. 29, 2016, full text available on the Stanford Law School China Guiding Cases Project's website, at <http://cgclaw.stanford.edu/judgments/zhejiang-2016-zhe-min-zhong-222-civil-judgment>.
- ¹⁸ The original text reads “申请再审” (“applied [...] for a retrial”). Article 199 of the *Civil Procedure Law of the People's Republic of China* provides, *inter alia*, that a party who considers an effective judgment or ruling to be erroneous may apply to the court at the next higher level for a retrial. See 《中华人民共和国民事诉讼法》 (*Civil Procedure Law of the People's Republic of China*), passed on, issued on, and effective as of Apr. 9, 1991, amended three times, most recently on June 27, 2017, effective as of July 1, 2017, http://www.moj.gov.cn/Department/content/2018-12/25/357_182594.html.
- ¹⁹ (2017) 最高法民再412号民事判决 ((2017) Zui Gao Fa Min Zai No. 412 Civil Judgment), rendered by the Supreme People's Court on Dec. 29, 2017, full text available on the Stanford Law School China Guiding Cases Project's website, at <http://cgclaw.stanford.edu/judgments/spc-2017-zui-gao-fa-min-zai-412-civil-judgment> (hereinafter “Retrial Judgment”).
- ²⁰ 本部分的黄色亮点由中国指导性案例项目添加, 以展示该项目对本指导性案例和其所依据的最终判决 (即: 《再审判决》, 注释15) 的比较。以黄色突出显示的表述/信息并不用于最终判决的“本院认为”部分。最高人民法院将这些表述/信息用于指导性案例中, 可能是为了改进该案例的推理部分, 继而再归纳成“裁判要点”。
- ²¹ Yellow highlights included in this section were added by the China Guiding Cases Project to reflect its comparison of this Guiding Case with the final judgment upon which this Guiding Case is based (i.e., *Retrial Judgment*, *supra* note 19). Expressions/details highlighted in yellow were not used in the “This Court Opines” section of the final judgment. The Supreme People's Court likely included these expressions/details in the Guiding Case for the purpose of improving the Guiding Case's reasoning section, from which the “Main Points of the Adjudication” section was derived.
- ²² 《再审判决》, 注释15。
- ²³ 在最终判决 (即: 《再审判决》, 注释15) 中, 相关表述比较简单: “海商法作为调整海上运输关系、船舶关系的特别法, 应优先适用。海商法没有规定的, 适用合同法等相关法律的规定。”
- ²⁴ *Retrial Judgment*, *supra* note 19.
- ²⁵ In the final judgment (i.e., *Retrial Judgment*, *supra* note 19), the relevant expressions are simpler: “海商法作为调整海上运输关系、船舶关系的特别法, 应优先适用。海商法没有规定的, 适用合同法等相关法律的规定。” (“As a special law that regulates relationships in carriage by sea and relationships between ships, the *Maritime Law* should be applied first. Where [an issue] is not provided for in the *Maritime Law*, provisions of relevant laws, including the *Contract Law*, shall be applied.”).
- ²⁶ 在最终判决 (即: 《再审判决》, 注释15) 中, 相关表述是: “[马士基公司的抗辩]客观合理。一审判决支持马士基公司的上述主张, 符合公平原则, 本院予以维持。”。
- ²⁷ In the final judgment (i.e., *Retrial Judgment*, *supra* note 19), the expression is: “[Maersk Company's defense] is objective and reasonable. The first-instance judgment, which supported Maersk Company's above-mentioned claims and conformed to the principle of fairness, is upheld by this court.”.
- ²⁸ 最终判决 (即: 《再审判决》, 注释15) 提供了《海商法》第八十六条的全部内容。
- ²⁹ The entire provision of Article 86 of the *Maritime Law* was quoted in the final judgment (i.e., *Retrial Judgment*, *supra* note 19).

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News and Events*

July 2019 | Dr. Mei Gechlik's Comments on the Value of Comparative Legal Studies Published in Xinhuanet Article

Dr. Mei Gechlik's comments on how scholars of international and comparative law can help bridge the gaps between the United States and China, increasing mutual understanding and improving bilateral relations, were included in a recent article published by Xinhuanet, the online news provider of Xinhua News Agency. The article is available at http://www.xinhuanet.com/english/2019-07/22/c_138247925.htm. ■

July 2019 | Dr. Mei Gechlik Delivers Lectures in Four Cities in China, Sharing Insights about Guiding Cases and Judicial Reform with More Than 2,000 Judges, 1,000 Lawyers, and Other Experts

Dr. Mei Gechlik, Founder and Director of the China Guiding Cases Project (the "CGCP"), delivered lectures in Guangzhou, Dongguan, Hangzhou, and Shanghai, building further connections with the legal community and sharing her insights on the



Dr. Gechlik meets with GONG Jiali, President of the High People's Court of Guangdong Province, and other leaders of the Court



Dr. Gechlik delivers a two-hour lecture at the High People's Court of Guangdong Province

judicial practice of using Guiding Cases and related major issues which forthcoming judicial reform measures should address. The lectures were warmly received and sparked interesting discussions.

On July 17, 2019, Dr. Gechlik met with GONG Jiali, President of the High People's Court of Guangdong Province, and other leaders of the court. Afterwards, she delivered a lecture titled "Judicial Practice on China's Guiding Cases". She first provided an overview of the 112 GCs released thus far by the Supreme People's Court of China (the "SPC") and the subsequent cases in which GCs have been mentioned, and then analyzed a few Guiding Cases that merit special attention. Based on these analyses, she offered her suggestions as to how the SPC could effectively carry out two specific reform tasks associated with the *Fifth Five-Year Reform Outline of the People's Courts (2019–2023)*: "improving the system of Guiding Cases" and "promoting the application of an AI-assisted system for handling criminal cases". Finally, she discussed the importance of Guiding Cases to the development of the Guangdong–Hong Kong–Macau Greater Bay Area and the Belt and Road Initiative (the "BRI"). The lecture was broadcast simultaneously across Guangdong province, with more than 2,000 judges viewing the lecture.

Dr. Gechlik also visited the Guangzhou offices of Dentons and Junhe law firms on July 16, 2019 and July 17, 2019, respectively, to deliver lectures on "Issues at the Forefront of China's Guiding Cases and Implications for the Guangdong–Hong Kong–Macau Greater Bay Area". After providing a comprehensive overview and analysis of Guiding Cases and subsequent cases, she discussed issues at the forefront of Guiding Cases, suggestions for reform, and the implications for the Guangdong–Hong Kong–Macau Greater Bay Area. Both lectures were simultaneously broadcast across each law firm's offices in mainland China via video links.

The above lectures would not have been possible without the support of Guangzhou University. Dr. Gechlik and the CGCP are grateful to Professor Li and Dr. Xiao for offering their kind assistance. In addition, Dr. Gechlik enjoyed her informal



Accompanied by Professor LI Ming, Vice Dean of the School of Law, Guangzhou University (fifth from the left), and Dr. XIAO Pinghui from the same school (second from the left), Dr. Gechlik met with senior partners of Dentons (Guangzhou), including Mr. Zuoke Chen (second from the right), who also serves as Executive Chairman of the Board of Directors of the firm and is an alumnus of Guangzhou University

conversation with a group of students aspiring to further their studies in the United States. She shared some advice based on her personal experiences.



After her lecture at Junhe, Dr. Gechlik, together with Professor LI Ming and Dr. XIAO Pinghui, met with three partners of the firm: Pete Zhang (far left), Yanghui Cao (far right), and Laura Fu (second from the right)



Dr. Gechlik and a group of judges who attended her lecture pose for a photo, standing at the judges' bench of a court



After Guangzhou, Dr. Gechlik traveled to Dongguan, Hangzhou, and Shanghai to continue her speaking tour.

On July 18, 2019, Dr. Gechlik had the opportunity to deliver the same lecture titled “Issues at the Forefront of China’s Guiding Cases and Implications for the Guangdong–Hong Kong–Macau Greater Bay Area” at the Dongguan No. 1 People’s Court. Like the lawyers at Dentons and Junhe, the judges attending the lecture asked many interesting questions and shared their thoughts about how to use Guiding Cases effectively.

On July 19, 2019, at the invitation of Professor QIAN Hongdao, School of Law, Zhejiang University, Hangzhou, Dr. Gechlik





gave a talk on “Guiding Cases in China: Review and Outlook”. The talk was given in both Mandarin and English to benefit international students who were present, some of whom were from BRI countries such as Pakistan.

Finally, on July 21, 2019, Dr. Gechlik met with alumni of Fudan University Law School in Shanghai. Moderated by Professor CHEN Li, Vice Dean of the law school, Dr. Gechlik’s talk focused on the growing significance of cases in China and related implications for Shanghai. ■



West Lake, near Zhejiang University



Professor CHEN Li, Vice Dean of the Fudan University Law School, and Dr. Gechlik



September 2019 | Dr. Mei Gechlik Begins a Series of Dialogues with *China Campus*

In May 2019, Dr. Mei Gechlik accepted an invitation from a Chinese magazine, *China Campus*, to regularly share her thoughts on various topics such as the development of the CGCP, trends in judicial academic research, and legal applications for artificial intelligence. These thoughts will be organized and written up in a series of articles for publication in *China Campus* by Ms. Lu Lydia Li, who is the magazine's remote editor and a CGCP member. Founded 31 years ago, *China Campus* is a mainstream magazine dedicated to serving more than 36 million college students all over China. Dr. Gechlik feels deeply honored to share her experiences and insights with college students in China through this magazine.



The first article of the series was published in September 2019. This article mainly covers Ms. Lu's interview with Dr. Gechlik, as well as Ms. Lu's experiences attending Dr. Gechlik's China Law and Business class and listening to a presentation by Mr. Shlomi Kofman, Israel's Consul General to the Pacific Northwest, who was invited by Dr. Gechlik to speak at Stanford Law School. During the interview, Dr. Gechlik led Ms. Lu through the course of the CGCP's establishment and growth, as well as the CGCP's positive impact on promoting the progress of China's judicial reform. During her attendance at the China Law and Business class and the presentation by Mr. Kofman, Ms. Lu experienced a "vivid, interesting, and diverse" classroom model and gained an appreciation for how "the CGCP values, which emphasize connecting interested parties and sharing insights, are helping to actively build a channel for the U.S. judicial and academic communities to understand China's judicial reform". ■

* The China Guiding Cases Project, *News and Events*, 6 CHINA LAW CONNECT 73 (Sept. 2019), <http://cgc.law.stanford.edu/clc-6-201909>. The original, English version of this piece was prepared by Allison Goh and Lu Li; it was finalized by Nathan Harpainter and Dr. Mei Gechlik.



新闻和活动*

2019年7月 | 熊美英博士关于比较法研究的价值评论发表于新华网文章中

熊美英博士就国际法和比较法学者如何能帮助弥合美国和中国之间的差距，以增加相互了解和改善双边关系，发表了评论。其评论刊载于新华社在线新闻机构新华网所发表的一篇文章中 (http://www.xinhuanet.com/english/2019-07/22/c_138247925.htm)。■

2019年7月 | 熊美英博士在中国四个城市进行演讲，与2000多名法官、1000多名律师和其他专家分享其对指导性案例和司法改革的见解

CGCP 创办人兼总监熊美英博士在广州、东莞、杭州和上海进行演讲，与法律界建立更深层次的联系，分享她对使用指导性案例的司法实践以及即将出台的司法改革措施应如何解决相关重大问题的见解。讲座得到了热烈的欢迎，并引发了有趣的讨论。



熊博士与广东省高级人民法院院长龚稼立及其他领导会面



熊博士在广东省高级人民法院进行了两个小时的演讲

2019年7月17日,熊博士与广东省高级人民法院院长龚稼立和该法院其他领导会面。之后,她发表了题为“中国指导性案例司法实践”的演讲。熊博士首先概述了迄今为止中国最高人民法院(“最高法”)所发布的112个指导性案例和相关后续案件,然后分析了一些值得特别关注的指导性案例。基于这些分析,她就最高法如何能有效开展与《人民法院第五个五年改革纲要(2019—2023)》相关的两项具体改革任务——“完善指导性案例制度”、“推广应用刑事案件智能辅助办案系统”——提出了建议。最后,她讨论了指导性案例对粤港澳大湾区和中国“一带一路”倡议发展的重要性。熊博士的演讲同步通过视频在广东省播出,有2000多名法官观看了该演讲。

熊博士还分别于2019年7月16日和17日在大成律师事务所和君合律师事务所的广州办事处,就“中国指导性案例前沿问题及粤港澳大湾区的启示”作出演讲。在对指导性案例和后续案件进行全面概述和分析后,她讨论了重大的前沿问题、改革建议和对粤港澳大湾区的启示。两个讲座都通过两家律师事务所的视频链接广播至它们其他的办事处。

如果没有广州大学的支持,上述讲座是不可能办成的。熊博士和CGCP感谢李教授和肖博士所提供的帮助。此外,熊博士还与一群有志赴美国深造的广州大学学生进行了非正式的对话。她根据自己的个人经历分享了一些建议。

在广州之后,熊博士前往东莞、杭州和上海继续她的巡回演讲。

2019年7月18日,熊博士有机会在东莞市第一人民法院就“中国指导性案例前沿问题及粤港澳大湾区的启示”作出演讲。与大成律师事务所和君合律师事务所的律师一样,参加讲座的法官们提出了许多有趣的问题,并分享了他们对如何有效使用指导性案例的看法。



熊博士在广州大学法学院副院长李明教授（左五）和该校的肖平辉博士（左二）的陪同下，与大成律师事务所（广州）的高级合伙人会面，其中包括陈作科律师（右二）。陈律师也是该律所的董事局执行主席，亦是广州大学的校友



在君合律师事务所（广州）完成讲座后，熊博士、李明教授和肖平辉博士与该所三位合伙人会面，即张平律师（最左边）、曹阳辉律师（最右边）和富君律师（右二）



熊博士和参加其演讲的一些法官站在法院内的法官席上拍照留念

2019年7月19日，应杭州浙江大学法学院钱弘道教授的邀请，熊博士就“中国指导性案例：回顾与展望”发表其看法。讲座以普通话和英语进行，让在场的国际学生们明白演讲的内容。其中一些学生来自巴基斯坦等“一带一路”沿线国家。





最后，在2019年7月21日，熊博士在上海与复旦大学法学院的校友相聚。由法学院副院长陈力教授主持，熊博士的讲座重点关注中国案例的重要性及其对上海的启示。■



复旦大学法学院副院长陈力教授和熊博士



2019年9月 | 熊美英博士展开与《大学生》的一系列对话

2019年5月,熊美英博士接受中国《大学生》杂志的邀请,定期分享其对CGCP的发展、司法学术研究趋势、法律在人工智能领域的应用等不同专题的看法。这些看法将由《大学生》杂志特约记者同时也是CGCP成员李露整理并撰写一系列文章,刊登在《大学生》杂志上。《大学生》已创刊31年,是致力服务中国约3600万大学生的主流期刊。能够通过该期刊与众多中国大学生分享其经验、见解,熊博士深感荣幸。



该系列第一篇文章已于2019年9月发表。该篇文章主要涵盖李露对熊美英博士的访谈,以及李露受邀体验熊博士的China Law and Business课堂、聆听以色列驻西北太平洋总领事Shlomi Kofman先生在斯坦福法学院的演讲。在访谈中,熊博士导出CGCP诞生及发展壮大的历程,以及CGCP在推动中国司法改革进程中所起到的积极作用。在China Law and Business课堂及Shlomi Kofman先生的演讲中,李露体验到了“生动、有趣、多样”的课堂模式,同时也感受到“CGCP所体现的连接、共享的价值,正积极构建着一个美国司法界、学术界对中国司法改革了解的渠道”。■

* 中国指导性案例项目,新闻和活动,《中国法律连接》,第6期,第79页(2019年9月),<http://cgc.law.stanford.edu/zh-hans/cle-6-201909>。英文原文由Allison Goh、Lu Li撰写,并由Nathan Harpainter和Mei Gechlik博士编辑。本中文版本由李露和赵炜翻译,并由熊美英博士最后审阅。





The Traces of Autumn
《秋迹》

CHEN Xuncheng

CHEN Xuncheng is a master of ceramic art in Guangdong Province, China. He was awarded the honorary title of “Young and Middle-aged Ceramic Artists Influencing China’s Media in 2012” by the Chinese Business and Media Leaders Annual Conference. His different works have won numerous provincial and national awards, including “Gold Award in the 2012 China Collection of Top Ten Artistic Ceramics”, “Gold Award in the 15th China Contemporary Ceramic Art Exhibition (Strongest Performance Category)”, and “Gold Award in the 15th China Contemporary Ceramic Art Exhibition (Competition Category)”.

Mr. Chen’s works have been exhibited at various art exhibitions, festivals, and cultural exchange activities at home and abroad, including the 26th Asian Art Exhibition held in Korea, ST.ART International Exhibition of Chinese Contemporary Ceramic Art held at the Today Art Museum in Beijing, the Chinese and American Ceramic Art Exhibition held at the University Art Museum of Guangzhou Academy of Fine Arts, and the 2017 Chinese New Year Arts and Culture Festival held at the Carreau du Temple in Paris. Mr. Chen’s works have been collected by famous art galleries in China, including the China Arts and Crafts Museum, the China Ceramics Museum, the Guangdong Museum of Art, and the Jiangxi Arts and Crafts Museum, as well as by many private organizations in mainland China, Hong Kong, and Japan. Mr. Chen has organized many individual exhibitions and has been conducting academic research on ceramic culture. He has published more than ten collections of his works, including *CHEN Xuncheng’s Ink and Zen of Life*.

Mr. Chen is a member of the China Arts and Crafts Association and the China Ceramics Industry Association. He plays important leadership roles, serving as the deputy director of the Ceramic Art Committee of the Art Committee of Guangdong Artists Association, the director of the Guangdong Ceramics Association, the director of the Chinese Painting Institute of Guangdong Province, and the director of the Guangdong–Hong Kong–Macao Greater Bay Area Artist Union. At the same time, Mr. Chen is also a distinguished research fellow at the Guangzhou Painting Academy, an expert for the “National Cultivation Program for Young Painters in Guangzhou”, and an adjunct professor at Guangdong Polytechnic Normal University.

陈训成

陈训成是中国广东省陶瓷艺术大师，曾获得由中国企业领袖与媒体领袖年会颁发的“影响中国2012年度媒体关注的中青年陶艺家”荣誉称号。他的不同作品获得广东省省级和中国国家级奖项，包括“中国收藏2012年十大艺术陶瓷名品金奖”、“第十五届中国当代陶瓷艺术展实力派类别金奖”、“第十五届中国当代陶瓷艺术展竞赛类别金奖”等。

陈训成的作品曾在海内外多项艺术展、艺术节和文化交流活动中展出，包括韩国举行的第26届亚洲艺术展、北京今日美术馆“就地出发”中国当代陶瓷艺术国际大展、广州美术学院大学城美术馆“中美陶艺家作品展”和法国巴黎三区圣殿礼堂2017巴黎新春中法文化艺术节等。他的作品被中国工艺美术馆、中国陶瓷博物馆、广东美术馆、江西省工艺美术馆等国内著名艺术馆，以及日本、香港及国内多家私人机构所收藏。陈训成多次举办个人展览并不断探索陶瓷文化学术高度，并出版了《陈训成水墨》、《生活的禅》等十来册作品集。

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