

Online Dispute Resolution Mechanism in China: Principle of Proceedings and Impact of Technologies

Zhixun Cao*

In China, all dispute resolution mechanisms have introduced online dispute resolution (ODR) system into their operations. To address this situation, this article suggests the principle of due process should include the limitations of Internet-based dispute resolution attempts and the impact of technologies should be taken seriously. The first part of this paper introduces the development of ODR in China. The second part identifies the major areas in which the due process should be secured. The third part focuses on new technologies and its relationship with ODR and among others, electronic evidence and artificial intelligence are discussed. This article concludes that we first need to consider the rapid development of ODR, while the settled procedural principles regarding due process and neutrality should still be the primary task of civil justice and Alternative Dispute Resolution.

Keywords: Online Dispute Resolution, Service of Legal Documents, Neutrality of Procedure, Electronic Evidence, Legal Artificial Intelligence

* Professor (Research) and Ph.D. supervisor at Peking University School of Law. LL.B./LL.M./Ph.D. (Peking). ORCID: <http://orcid.org/0000-0003-4996-4495>. The author may be contacted at: pkuhector@pku.edu.cn; <https://en.law.pku.edu.cn/faculty/faculty1/111594.htm>/Address: Room 315, Chenming Building, No. 5 Yiheyuanlu Road, Peking University Law School, Haidian District, Beijing 100871, China.

The author would like to thank Prof. Masahisa Deguchi for his invitation to prepare a Chinese national report on Online Dispute Resolution, which is a preliminary draft of this contribution, and for the questionnaire prepared by him and Prof. Maiko Miyashita. The author would also like to thank Eric Lee and Luye Mou for their kind motivation and Ruowei Huang, Yunfei Cai, Qing Wei, Jialin Li, Xiaoqi Shi, and Longde Sun for their outstanding research assistance.

All the websites cited in this article were last visited on January 26, 2022.

I. INTRODUCTION

The Online Dispute Resolution (ODR) is not a new concept,¹ but rather has developed over a long period of time in an academic and practical sense.² In addition to the well-accepted alternative dispute resolution (ADR) mechanism, ODR is one of the “two global movements” that can dramatically affect the “complexion of justice.”³ The “convergence of ODR and ADR within the courts is transforming the nature of access to justice,”⁴ although some argue for emphasizing the distinction between online ADR and online courts.⁵

As the Covid-19 pandemic around the world has posed a serious challenge to the administration of civil justice, nearly every jurisdiction should seriously adjust to the current conditions.⁶ However, because humankind today is better equipped with scientific and technological tools than the time of the 1918 influenza, it has not so far been necessary to postpone dispute resolution or hold hearings outdoors in open spaces like parks.⁷ Online services such as Skype, Zoom, CISCO Webex, and software systems operated by the governmental authority⁸ are available for holding virtual hearings. The Home Office, rather than keeping adjudicators locked in closed rooms, has not opposed the compulsory rule,⁹ and court proceedings had to change rapidly to constrain the spread of the virus.¹⁰

In this vein, both the national judiciary and ADR mechanisms have been heavily affected. For instance, in the area of international commercial arbitration,¹¹ the newest empirical international arbitration survey of the Queen Mary University of London shows that compared with the survey findings from three years prior, comprehensive virtual hearings are much more frequently held. Even in this case, however, videoconferencing has not changed dramatically.¹² Although the question of whether the already well-established arbitration belongs to ADR depends on the definition of ADR in the national or international contexts, it is clear that arbitration and the other ADR mechanisms need to be adjusted, as well. Lawyers and other professionals now try to ensure that they can continue their work with the solution of ODR which does differ from traditional dispute resolution.

Online courts have increased access to justice worldwide during Covid-19,¹³ but the online environment has led to some practical problems. In China, all dispute resolution mechanisms (civil courts, commercial arbitration, facilitated mediation, and e-commerce) have introduced ODR into their operations. All four

mechanisms face the same online conditions and thus face similar problems. This situation makes Chinese legal approach to addressing the issues a good example for observation.

The primary purpose of this research is to emphasize that regarding various existing ODR mechanisms in China, the principle of due process should include the limitations of Internet-based dispute resolution attempts and the impact of technologies should be taken seriously. This paper is composed of five parts including Introduction and Conclusion. Part two will review the current development of ODR in China. Part three will discuss the role of ODR in China for securing the general principle of due process. Part four will deal with new technologies for ODR.

II. WIDELY ACCEPTED ONLINE DISPUTE RESOLUTION IN CHINA

A. Commercial Arbitration

In the area of commercial arbitration, online operations are generally accepted. In practice, because of the convenience of arbitral proceedings, the commercial arbitration is popular in the whole business world. If the parties could mutually decide for online proceedings in specific cases, the responsible arbitration institutions should respect the need of parties and prepare the necessary framework to improve their own arbitral service. Prior to the global pandemic, the online service had already been adopted by Chinese arbitration institutions. For instance, the Shenzhen Court of International Arbitration (SCIA) released Online Arbitration Rules in 2019. Article 3 of these Rules provides that for disputes arising from online transactions or other commercial disputes, where the parties agree to submit their dispute to the SCIA for online arbitration, it is understood that the parties have agreed to that arbitration. Article 6 makes clear that online arbitration cases will be heard online, and related follow-up, such as case acceptance, payment of fees and costs, service, exchange of evidence, hearing, mediation, rendering of awards, and other procedures, will be generally conducted online.

It is also noted that the China International Economic and Trade Arbitration

Commission (CIETAC), a leading institution of commercial arbitration, has also been the pioneer in ODR in China. In addition to having established an online arbitration platform in 2009,¹⁴ CIETAC registered ‘ODR’ as part of the domain name at one of its websites, the Online Dispute Resolution Center.¹⁵ This agency resolves, in fact, disputes over .CN domain names and generic top-level domain names.¹⁶ Moreover, CIETAC announced its Guidelines on Proceeding with Arbitration Actively and Properly during the Covid-19 Pandemic (Trial) (Hereinafter Guidelines)¹⁷ in summer 2020. For instance, the parties and their representatives are encouraged to file their arbitration applications with CIETAC’s online case filing system or to use the postal service or other noncontact means to submit their arbitration applications.¹⁸ To promote the efficient service of documents, parties are always encouraged to agree to submit and receive arbitration documents via email at all phases of the arbitration process. Where CIETAC personnel asks in the Notice of Arbitration for the parties’ opinions on the submission, receipt, and service of arbitration documents by email, the parties are urged to consider approving submission by email.¹⁹

In the Guidelines, a virtual oral hearing is specifically held in accordance with the Arbitration Rules. During the Covid-19 pandemic, Article 2.6 of the Guidelines requests that arbitral tribunals for cases to be examined with oral hearings consider holding virtual hearings. Concretely speaking, the tribunal is requested to comprehensively consider such factors as the parties’ opinions, the complexity of the case, the volume of evidence, any witness to be present, any arguments against holding a virtual hearing, and the convenience and equality of participants’ access to the virtual hearing facilities.²⁰ Article 2.6 of the Guidelines also states that during any virtual hearings, the arbitral tribunal shall fully protect the parties’ procedural rights to present their cases reasonably and to enforce the arbitral award equally under the applicable procedural law.

Furthermore, Article 2.6 of the Guidelines stipulates that after consulting with the parties, an arbitral tribunal can adopt one of the available means for virtual hearings based on the case circumstances. First, if arbitrators, parties to a case, their representatives, and other participants are located in different parts of mainland China, the tribunal can hold a virtual hearing on the CIETAC smart oral hearing platform.²¹ Second, if arbitrators, parties, their representatives, and other participants are located in different jurisdictions, or if the hearing will not be held

in Chinese, a virtual hearing is possible on an outside video conferencing platform that the parties agree to and CIETAC approves. Third, once CIETAC facilities reopen to the public, all case participants can participate in virtual hearings at their nearest CIETAC facilities. Lastly, if case participants are located in different jurisdictions, virtual hearings can be held on joint platforms between CIETAC and other foreign arbitration institutions.

Under these rules, we may figure out the importance of the agreement between parties, the flexibility of arbitral proceedings and the power of the arbitral tribunals. The special consideration is given to the Covid-19 pandemic, while the aforementioned concrete rules could be of utility for the normal operation of proceedings when the pandemic is over in the foreseeable future. For successful arbitral proceedings, the convenience of dispute resolution and the parties' intention are two crucial elements. Especially, arbitration is the result of private autonomy and parties' choice. There is less doubt on the admissibility of having online steps of the proceedings when the parties have agreed to adapt such proceedings. Nevertheless, when it comes to the state's court and its statutory civil proceedings, the lawyers may consider whether procedural agreements, in any form, could regulate the parties to outline the current or future civil proceedings in the public court.²²

B. Facilitated Mediation

ODR is also popular in mediation. Mediation is a way for a third party to facilitate the settlement between the parties, while arbitration targets at making a adjudicative decision to the case at issue.²³ Since both arbitration and mediation have been acknowledged as major approaches to resolving disputes, an outsider may presume that just like the situation in commercial arbitration, the same online transformation happens in the area of facilitated mediation. Besides the commercial mediation or other forms of mediation out of the judicial process, there is so-called judicial mediation, as well. It represents that mediation organized by the trial judges themselves is already an ordinary part of the civil process in China.²⁴ In this respect, online judicial mediation is possible just as online litigation. Despite that there are already countless online mediation cases previously, the SPC promulgated the Rules on Online Mediation of People's Courts on December 30, 2021.²⁵ This judicial interpretation says basically that the

judges and other mediators could mediate the cases before the commencement of or during civil proceedings. Designated Internet courts even have conference rooms reserved for online mediation. Moreover, out-of-court mediation can use ODR.

Among various mediation possibilities, a Chinese integrated mechanism deserves some discussion in this contribution. There is a consensus in China that the country needs to adopt a system of “one-stop diversified dispute resolution” [一站式多元解纷平台]. In October 2016, according to a special report released by the Supreme People’s Court (SPC) in 2019, the SPC launched a unified online mediation platform to cover mediation processes from acceptance to classification, resolution, and feedback. The platform has multiple functions, such as court-annexed mediation before and after filing and application for court approval.²⁶ By October 31, 2019, it is said that the SPC online mediation platform had served 2,679 courts, 21,379 professional mediation organizations, and 79,271 mediators and resolved a total of 1,369,134 cases via mediation.²⁷

As one example of this ongoing ODR plan, the First Intermediate People’s Court in Hainan Province established the first online platform for mediation²⁸ in December 2019. It has connections with the mediation facilities in Hong Kong and Macau as well as various governmental branches, arbitration centers, and local Women’s Federation. The Women’s Federation, a government-affiliated organization whose main responsibilities are to represent and safeguard women’s rights and interests, has been able to use this online platform to help settle family disputes more effectively.²⁹ It is reported that until October 2021, there were in total 328 cases handled on this platform, 135 cases among which were international commercial cases.³⁰

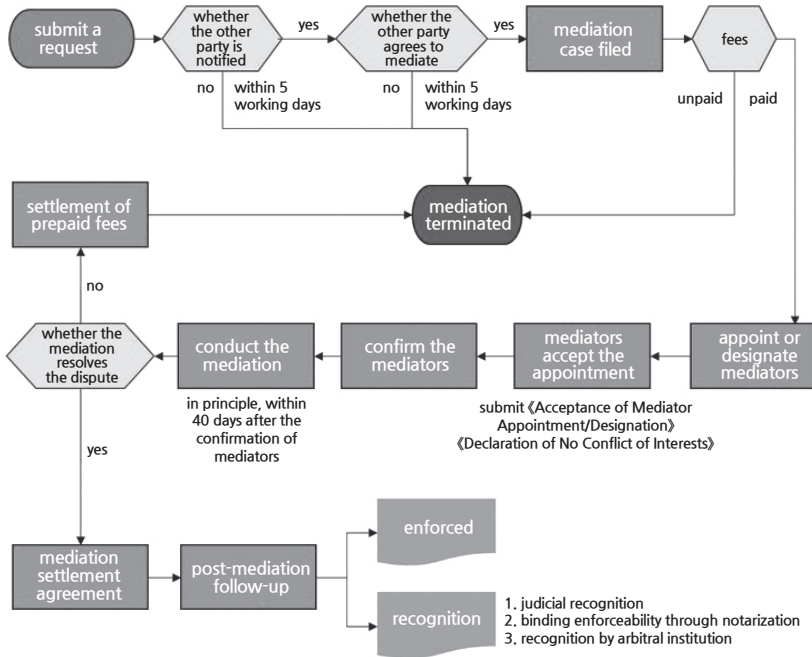
To establish a platform for resolving international commercial disputes³¹ with the organic connection of litigation, mediation, and arbitration,³² the General Office of the Central Committee of the Communist Party of China and the General Office of the Chinese State Council set a target of forming a “one-stop” diversified mechanisms for resolving international commercial disputes in June 2018.³³ Both General Offices then published their Opinion concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions³⁴ which settled the framework of transnational dispute resolution.

Half a year later, the SPC selected CIETAC, the Shanghai International

Economic and Trade Arbitration Commission, SCIA, the Beijing Arbitration Commission, the China Maritime Arbitration Commission, and the Mediation Center of the China Council for the Promotion of International Trade and the Shanghai Commercial Mediation Center (SCMC) as the first group of arbitration and mediation institutions involved in this program.³⁵ There are also articles regarding the overall layouts of “smart courts,” stipulating that the SPC should continue to strengthen the information-based construction of the “one-stop” diversified settlement mechanism for international commercial disputes; optimize the functionality of online dispute settlement platforms; and effectively promote the organic connection of mediation, arbitration, and litigation. Such efforts aim to resolve international commercial disputes in a fair, efficient, and convenient manner.³⁶ A senior SPC judge saw the measures aforementioned as “vigorously promoting the development of the CICC’s information infrastructure ... and striving to achieve the goal of the ‘smart trial.’”³⁷

It is also stipulated that ODR providers can be private entities rather than governmental branches. In addition to the court system (pure public) and leading arbitration institutions (public and private) that already facilitate mediation, there are private mediation entities. The aforementioned SCMC, established in 2011, has staked a claim as the first institution in China to specialize in commercial dispute mediation,³⁸ which provides services both online and offline. Moreover, there is a private player in the city of Shenzhen called Benchmark Chambers International & Benchmark International Mediation Center (BCI&BIMC). On October 26, 2019, BCI&BIMC added mediation to its services offering based on its platform for foreign law ascertainment. The agency has also actively invited Chinese and international leading mediators with abundant experience across the country to join. The services of BCI&BIMC can connect to civil litigation in certain courts. For example, the Shenzhen Intermediate People’s Court can use those services for online or offline mediation.³⁹ The BCI&BIMC business model can be summarized in the following figure.

Figure 1: The BCI&BIMC Service Procedure⁴⁰



One might wonder if public resources are used to financially support these private providers. The answer is ‘no.’ Even if promoting ODR is one of China’s policies, ODR itself is not eligible for any government subsidies. Instead, the parties to any online mediation normally pay the fees in advance, with actually allocated amounts agreed to by the parties. For instance, BCI&BIMC charges three fees for its mediation services, registration, administration, and mediation itself. Fees are calculated in consultations between the parties and mediators and can be hourly, weekly, or in proportion to the dollar amount being contested. Parties agree on hourly or weekly rates when it is difficult to calculate the contested amount.⁴¹ Meanwhile, CIETAC and other online arbitral proceedings are governed by a special fee chart with slightly lower than the standard charges.⁴² However, this special arrangement does not waive the fees for the parties to pay.

C. E-commerce Systems

E-commerce could, by nature, call for Internet-based ADR.⁴³ On the one hand, it is noted that the commercial arbitration concentrates mainly on the enforcement of commercial contracts. If there are some contractual disputes in the field of E-commerce, the parties could rely on the commercial arbitration to determine the controversial issues when they previously have concluded a valid arbitral agreement. Regarding e-commerce, there should be many materials or evidence generated online. An Internet-based arbitration may at least be of advantages during evidential exchange and evaluation. On the other, some Internet platforms are even responsible for resolving e-commerce disputes. Specifically, Article 63 of the E-Commerce Law states that an e-commerce platform business should establish an online dispute settlement mechanism; develop and publish dispute settlement rules; and equitably and impartially settle disputes based on voluntary mutual agreement. Article 61 of the same law emphasizes that when a consumer buys commodities or receives services on an e-commerce platform and is involved in a dispute with the in-platform business, the e-commerce platform business must protect the consumer's lawful rights and interests. Actually, ODR could protect consumers' rights just as it could protect other rights.⁴⁴

In particular, online platforms such as JD (Chinese version of Amazon)⁴⁵ and Taobao (Chinese version of eBay)⁴⁶ provide multiple ODR models to facilitate dispute resolution, as other Internet platforms do. For instance, Taobao's dispute resolution service is a nonbinding, third-party evaluation system. The platform's special commissioners, who are ordinary employees, perform the dispute resolution functions. There are requirements for the burden of evidential production and the standard of proof. Under this public jury system established in 2012, even a voluntarily registered jury could participate in arbitration for some types of disputes. Today, Taobao reports more than 4 million jurors registered and 16 million cases concluded.⁴⁷ In addition to ordinary e-commerce between consumers and service providers, Taobao governs intellectual property disputes under a separate intellectual property dispute resolution mechanism.⁴⁸ Weibo (Chinese version of Twitter) has a similarly comprehensive set of community rules.⁴⁹

D. People's Courts

When the aforementioned ADR mechanisms fail, the state judiciary will play a key role as the last resort in dispute resolution. In this case, standard court proceedings govern the default rules. Chinese courts take ODR into account very seriously and have been attempting to lead the trend in ODR.⁵⁰ E-courts take one of two forms, internal or external. An internal e-court takes place in a physical courtroom with communications technologies, whereas an external e-court could be entirely virtual.⁵¹ As Susskind pointed out, there is a certain question of whether courts are a service of the state for dispute resolution or places for people to congregate.⁵²

In 2018, the Internet courts in Beijing, Hangzhou, and Guangzhou tried cases entirely online, including acceptance, service, mediation, evidence exchange, pretrial preparation, court trial, judgment pronouncement, as stipulated by Article 1, paragraph 1 of the Provisions of the SPC on Several Issues concerning the Trial of Cases by Internet Courts (hereinafter Provisions Internet Courts 2018).⁵³ FU promptly observed that Chinese courts received 16.51 million new cases and resolved 13.08 million cases during the worst months of the pandemic from January to July 2020 and that the ratio of closed cases remained stable year-on-year.⁵⁴

There are other online courts than the well-known Internet courts. In 2018, the SPC established two international commercial courts as standing judicial organs that covered major international commercial cases, and both courts incorporated ODR mechanisms. In this context, these two courts are not independent courts but divisions under the framework of the SPC.⁵⁵ Article 10 of the Provisions of the SPC on Several Issues concerning the Establishment of International Commercial Courts of 2018 stipulates that an international commercial court may collect evidence and conduct cross-examination using audiovisual transmission technology or through other information networks.⁵⁶ Article 18 of the same Provisions adds that an international commercial court may provide electronic litigation, trial process information disclosure, and other litigation services, as well as support case filing, payment of court fees, inspections of case dossiers, exchange of evidence, service of litigation documents, and online hearings.

Moreover, the Beijing Financial Court adopted advanced online case management in early 2021. All steps in cases were taken online, and e-dossiers were used instead of paper during the entire proceedings. Both parties took

part in the online hearings, in which e-dossiers and any additional evidence were uploaded before presentation to the trial panels. These e-dossiers were subsequently stored for record retention. The panel members examined and evaluated the evidence, and the judges' opinions were collected in an automatic interpretation system that then produced transcripts. After proceedings, judges' assistants sent out decisions by electronic service. The whole process for each case took only nine days. These cases, by their nature, required setting aside arbitral awards, which demands a great extent of the formal review and is thus easier to determine than cases being judged on their merits. Nevertheless, the performance of this newborn Beijing Financial Court could still represent the possibility of promoting electronic proceedings more generally in China.⁵⁷ The fact that Beijing Financial Court took seriously the official news reports about these new electronic processes reflects the practical stress on electronic proceedings.

Here, a question may arise of how the newest judicial reforms would perform and whether they could lead to a new phase of ODR. For instance, with the Notice by the SPC of Issuing the Measures for the Implementation of the Pilot Program of the Reform of Separation between Complicated Cases and Simple Ones in Civil Procedure of January 2020 (hereinafter Pilot Program 2020),⁵⁸ which passed its midterm exam in February 2021,⁵⁹ the SPC initiated reforms that included a separate part on electronic litigation. Among others, Article 21, paragraph 1 of the Pilot Program 2020 provides that litigation activities can take place online which have the same effect as offline activities. Meanwhile, Article 21, paragraph 2 lays down that courts can decide whether a proceeding can take place online based on technical conditions, the circumstances of the case, and the intention of the parties, among other factors. Then, the SPC released its Rules of Online Litigation of People's Courts (hereinafter Online Litigation Rules)⁶⁰ which came into force on August 1, 2021. This judicial interpretation elaborates various rules to promote online proceedings.

Since the Pilot Program 2020 is by its nature an experiment for the forthcoming revision of the statute, Chinese lawyers looked forward to a new Civil Procedure Law in the latter half of 2021. The related rules of the Pilot Program 2020 have been generally adopted by the latest revision of the PRC Civil Procedure Law.⁶¹ The newly added Article 16 of the Law confirms Article 21 of the Pilot Program 2020, whereas it incorporates the consent of the parties as the precondition to have

online civil proceedings. This precondition shows the efforts of the academics in China who endeavor to stand for the ordinary citizens. Because the procedural rights of the parties to a civil process will be affected by the new reform equipped with rules for online proceedings, we have to be prudent and cautious to enquire for the agreement of the parties on having online proceedings.

III. SECURING THE GENERAL PRINCIPLE OF DUE PROCESS

A. Pros and Cons of the One-stop Mechanism

The aforementioned one-stop dispute resolution mechanism, which represents a more combined model of mediation, is believed to have different advantages and thus needs to be promoted all over China. It could provide convenience to the parties not just because the one-stop mechanism could help the justice users resolve their disputes with different procedural options, but the clients to civil justice could visit and utilize multiple facilities while sitting at home all the time. This mechanism, which could be regarded as an advanced counterpart of the Sanders' "multi-door courthouse" design,⁶² can be served for the ordinary citizens more easily.

Within this integrated mechanism, there could be less disputes on the connection or transfer of the case from one form of dispute resolution to another form. In this way, the combination of different forms of dispute resolution, such as Med-Arb, Arb-Med, Med-Arb-Med or pre-action mandatory mediation,⁶³ could be streamlined accordingly.⁶⁴ Conversely, all alternative forms of dispute resolution are undoubtedly in the shadow of court proceedings.⁶⁵ Furthermore, some collected evidential materials such as the judicial expert identification (equivalent: factual expert witness or Sachverständigung) in the pre-action phase could also be acknowledged as the statutory evidence which could be submitted and evaluated during the court's hearings. Otherwise, these materials would be rejected to be admissible evidence as they do not meet the statutory requirement that evidence ought to be collected during the judicial process.

In the meantime, the practitioners at local level may worry about the impact of this one-stop policy in practice. The possibility of pre-action mediation or some

kinds of consultation might jeopardize the parties' fundamental right of claim before courts. The reason is that other than having their day in court instantly after the filing of a lawsuit, the parties would normally be transferred to the mediation facilities at first. Then, the parties have to wait for when the mediation facilities send the case back to the competent court. The whole process may take months in reality. If there is indeed no chance to reach any settlement between parties, these pre-action proceedings make no difference and therefore is a waste of time. Theoretically, we may have to accept a "mediatory continuum" between the court proceedings and mediation⁶⁶ as the Weber's ideal type. However, the delay of civil proceedings should never be attributed to the chance of mediation. In this sense, the new online form of dispute resolution outside the court may change the specific methods to do justice, but the procedural safeguard of civil justice is still supposed to be maintained. Justice delayed is justice denied, and ODR cannot be an excuse to postpone the proceedings.

Concretely speaking, the crucial concern refers to the insistence on the due process principle in different areas of civil justice which is not limited to the Internet justice. Previously, it was recognized that the one-stop mechanism could contribute to the convenience of dispute resolution which may relate to more flexible and then simplified proceedings. Indeed, there are too many cases before Chinese courts and too few qualified judges who could resolve the relevant disputes. As a result, the one-stop mechanism is not merely for the ordinary citizen, but also for the court system itself. Yet, it should be kept in mind that the court is to deliver justice to the justice users. The court should decide which party has rights and which party is truly a wrongdoer who is accountable for his/her behaviors. In other words, the civil justice cannot flee away from its duty to make such decisions. The other dispute resolution facilities could neither do such job instead nor provide ordinary due process for the parties.

One of the right approaches to handling with the overburdened caseload is, besides designating more competent judges, to reduce the cases which could flow into the judiciary or to slow down the pace of courts while managing the cases in dispute. Justice delayed could to some extent still be justice, whereas justice with serious errors, which are caused by accelerated proceedings, would be even more troublesome. If only emphasizing the necessity of having some speedy, cheap, polite judicial services which are nevertheless not supported with

sufficient resources, the chance of having defective judiciary is much higher. It is not desirable for the public trust in the judiciary and is also toxic for the individual judge who is already working very hard to finish his/her professional assignments. It is not fair for these hard-working judges, especially the judges at grass-root level who form the targeted group of any judicial reform, but has less influence on the policy-making and will have to endure or undertake the anger of individual parties.

Moreover, the judicial techniques should be enhanced. For instance, there ought to be advanced procedural institutions which allow the resolution of multiple and complex disputes in one single litigation. The author would like to draw attention to the usage of consolidation of claims/parties, compulsory aggregation of claims and the deepened understanding of the *res judicata* effect⁶⁷ of a final civil judgment.

B. Internet-based Advance Arbitral Awards?

Following the general coverage of Chinese ODR mechanisms, the question would arise of what should be the limitations of Internet-based dispute resolution. Here, the principle of due process should be stressed for securing parties' substantive and procedural rights during ODR. There is no need to emphasize the importance of due process for Chinese and foreign audiences, but disputes can be existing on whether due process has been sufficiently protected. Particularly, in the context of ODR, which, by its nature, represents creative measures, there could be even more room for practitioners to tell their stories.

Here, it is worth introducing a well-known example of advance arbitral awards [先予仲裁裁决], literally meaning an arbitral award which has already been given before the related dispute arises, in recent commercial arbitration in China as an illustration of when the principle of due process was violated and then restored. Because ODR has at least partly developed because of lawyers' efforts to think and practice creatively, there can always be new attempts to use ODR methods, but some actions can go too far and jeopardize procedural justice materially. In the following case, an arbitration institution addressing an advance arbitral award ruled in favor of a money lending company. In June 2018, the SPC released a special judicial document called Official Reply of the SPC on the Application of Law on Placing "Advance Arbitral" Awards or Mediations of Arbitration Institutions on File for Enforcement,⁶⁸ which aimed to target the misuse and

manipulation of arbitral proceedings, especially online proceedings.

Internet-based arbitration is time-saving and efficient because it eliminates the physical limitations on conducting arbitral proceedings, making it appealing to money lending companies, among other entities. Money lending contracts contain a clause stating that the company can enforce contracts as the final arbitral award, although, to date, there have been no lending disputes. For marketing purposes, some arbitration institutions will facilitate these agreements if they did not initiate them, and they will make final arbitral awards accordingly. For practical purposes, the borrower has no access to substantive arbitral proceedings. This standardized lending arrangement deprives debtors of their constitutional right to be heard before the court.⁶⁹

When online arbitration process began and disputes came to arise in lower courts, judicial interpretations tried to comply with the SPC, which makes one specific judicial interpretation to set rules for this disputed case category. For instance, under Article 2 of the Arbitration Law, an institution will arbitrate existing contract disputes and other property rights and interest disputes. For cases in which money lending companies apply to enforce an arbitral award or mediation ruling rendered before a genuine dispute occurs, courts must not accept the applications, and if an application was accepted, it should be rejected.⁷⁰ The reason for this rule in the Official Reply is that the judiciary does not take the aforementioned “Advance Arbitral” awards or mediations as valid enforcement titles (*titres exécutoires*). Therefore, these awards or mediations are not capable of initiating the enforcement proceedings under Chinese law.⁷¹

Additionally, the SPC recognizes the following two circumstances as indicating that the “composition of the arbitration tribunal or the arbitration procedure has violated the statutory procedures” set out in Article 244, paragraph 2 (3) of the PRC Civil Procedure Law. On the one hand, an arbitration institution neither hears a dispute, nor presides over a mediation under the procedures of the Arbitration Law procedures. Instead, it renders a decision according to the settlement or mediation agreement signed by the parties to a P2P lending contract before the dispute occurs. On the other, an arbitration institution does not protect the parties’ fundamental procedural rights prescribed in the Arbitration Law, such as applying for disqualification of arbitrators, providing evidence, and defending themselves during the arbitration. Furthermore, where a party to a P2P lending contract claims

that the arbitration procedures do not violate the legal procedures based on the agreed waiver clause, the People's Court shall not grant support thereto. Lastly, this Official Reply of the SPC applies to enforcing arbitral awards or mediations on contract and property rights and interest disputes.⁷²

With this Official Reply, these “Advance Arbitral” Awards or Mediations of Arbitration Institutions were declared void in China. This rapid response from the judicial branch is of great importance in practice, because a great amount of potential enforcement cases are then prevented from going into the enforcement organ, namely the People's Courts themselves.⁷³ For the relevant parties in arbitral proceedings, this Official Reply also means that their due days in arbitral hearings could be safeguarded. Then, it comes to a further question: to what extent the Internet-based arbitral proceedings could be simplified without prejudice to the requirement of due process? With our example of “Advance Arbitral” Awards or Mediations we could merely determine the bottom line of procedural justice. It is rather up to the commercial and judicial practitioners to develop feasible paths for the online arbitration.

C. Online Service of Legal Documents

Among others, serving or notifying legal documents to the parties and competent entities during any proceeding shows one key element of due process which exists in every legal jurisdiction. It is clear that proceedings should not go forward unless all parties have been properly noticed.⁷⁴ In fact, this requirement for service and notice in civil proceedings is rather a well-acknowledged principle of civil procedure. To prove it, we could among others turn to the new Model European Rules of Civil Procedure,⁷⁵ which has a subtitle of “Service, Due Notice and the Right to be Heard.” Forms of notice are generally stipulated by fixed legal rules that might be “beyond the constitutional requirements” for “mechanics of notice and service.”⁷⁶ However, it is noticeable that the electronic means of service follows different processes and the same set of rules should apply to these means. Beyond ADR, Chinese courts have developed detailed procedures for service that can extend to other areas of dispute resolution. The new rules could introduce serving litigation documents as an example of potential Internet-based arbitration and mediation.

Once a court registers a new civil case, it has the judicial responsibility to serve

the litigation documents to the defendant, which holds for online proceedings as well. Article 87, paragraph 1 of the PRC Civil Procedure Law of 2012 stated that with the consent of the person to be served, a court could serve litigation documents by fax, email, or any other means that allows a sender to confirm receipt by the person being served except for judgments, rulings, and consent judgments. If the court adopts one of the above means, according to Article 87, paragraph 2 of the PRC Civil Procedure Law of 2012, when the fax, email, or other means reaches the intended recipient is considered the date of service. Following this revolutionary new rule, Article 135 of the Interpretation of the SPC on the Application of the PRC Civil Procedure Law of 2015⁷⁷ (ICPL 2015) adds that, in its first paragraph, litigation documents can electronically be served via fax, email, mobile communications, and other specific systems. In such a case, based on the second paragraph of the aforementioned Article 135 of ICPL 2015, the date the document reaches the recipient within the specific systems is the date of service recorded in the relevant system. However, according to the same second paragraph, when a recipient can confirm that he or she received the document on a different date from what was indicated in the court's system, the former prevails. Article 136 of ICPL 2015 also says that a person who agrees to be served electronically must confirm this.

At the end of 2016, the SPC released Several Opinions of the SPC on Further Promoting the Efficient Distribution of Complex and Simple Cases and Optimizing the Allocation of Judicial Resources of 2016⁷⁸ (hereinafter Opinions). Among others, Article 3 of the Opinions is a comprehensive one which covers different perspectives of serving legal documents and therefore could be used as a suitable illustration for the Chinese approach of online notification during civil proceedings. Article 3 stipulates that if parties agree on a service address before any dispute arises, the court can use it as the confirmed address for serving litigation documents. A party that brings an action or submits a defense must confirm the service address in written form. Moreover, if parties have agreed to electronic service of documents, they must provide and confirm such electronic service addresses as fax number, email address, and WeChat ID. Still within Article 3, the Opinions call for taking full advantage of China Judicial Process Information Online and establishing a uniform electronic service platform for courts across the country, such as improving how the national postal institution

serves litigation documents by offering the exclusive delivery service for courts.

In February 2017, following the promise made in the SPC's annual report,⁷⁹ a National Unified Electronic Service Platform for Courts [全国统一电子送达平台]⁸⁰ began trial after the establishment of smart courts. Four different courts, namely, Fengman District People's Court in Jilin Province, Huadian City People's Court in Jilin Province, Hangzhou Railway Transport Court, and Yuhuan People's Court in Zhejiang Province, were selected as the pilot sites. Litigation documents in those courts were available through Sina Weibo, Sina Email, Alipay, and other platforms, whose channels are particularly efficient because of popular social media in China.⁸¹

Article 24, paragraph 1 of Pilot Program 2020 provides that with the consent of the person being served, the courts can deliver litigation documents and evidential materials by electronic means such as the China Judicial Process Information Online, the National Court Unified Service Platform, fax, email, and instant messaging. In this regard, Article 24, paragraph 2 of Pilot Program 2020 lists specifically that any of the four circumstances constitutes consent to electronic service under court rules.⁸² Article 25 of Pilot Program 2020 regulates that after receiving the express consent of the person being served, the People's Court may electronically serve adjudicative instruments such as judgments, rulings, and consent judgments. However, if a party requests printed versions of these instruments, the court must provide them. Before Articles 24 and 25 of Pilot Program 2020, meanwhile, Article 15 of Provisions Internet Courts 2018 established substantially similar rules. Combining Article 87, paragraph 1 of the PRC Civil Procedure Law of 2012 and Article 25 of Pilot Program 2020, Article 90, paragraph 1 of the current PRC Civil Procedure Law makes it clear that with the consent of the person to be served, the court could serve litigation documents using electronic means that allows a sender to confirm receipt by the person being served. While serving judgments, rulings, and consent judgments, if a party requests printed versions of these instruments, the courts must provide them. Such new rules refer to a significant breakthrough since the Chinese legislator is hereby considering the service of documents for tens of millions cases. In any case, civil proceedings are to be terminated by some form(s) of judicial decisions of the competent court. Nevertheless, in theory, it is of equal importance to notice that the consent of either party is still essential for the adopting of electronic service.

How far procedural contracts could stipulate is a genuine issue of due process. The new statute shows the unavoidable emphasize in China on the contractualization of civil litigation which has also been grasped in the aforementioned relationship between arbitration and litigation.⁸³

Even though the parties agree to e-service, its effectiveness comes into question. Article 26, paragraph 1 of Pilot Program 2020 clarifies that if a People's Court uses an electronic address voluntarily provided or confirmed by a person being served, service actually takes place when the information served reaches the system where the electronic address is located. Article 26, paragraph 2 then stipulates that if the person being served consents to electronic service but fails to voluntarily provide or confirm an electronic address, and the People's Court uses an available electronic address of the person being served for service, whether service is completed is determined according to the different circumstances.⁸⁴ Lastly, according to Article 26, paragraph 3, if the service is completed effectively, the court must prepare for an acknowledgment of electronic service as the effective receipt. Prior to Article 26 of Pilot Program 2020, Article 17 of Provisions Internet Courts 2018 had already established substantially similar rules. The suggested rules themselves are provided in a complicated way. However, they intend to meet the need of various courts and practitioners by incorporating varied situations in one single article.⁸⁵

Compared to these previous rules, Article 90, paragraph 2 of the current PRC Civil Procedure Law chooses to be straightforward and alters Article 87, paragraph 2 of the PRC Civil Procedure Law of 2012 only slightly. The current rule orders that when the court serves litigation documents using electronic means, service actually takes place when the information served reaches the specific system of the person being served. It means that the new statute refuses the efforts of the SPC to distinct between the situation where the party has been formally served and the situation where the party has been notified substantially. However, Article 31 of the Online Litigation Rules has already incorporated Article 26 of Pilot Program 2020, and this Online Litigation Rules ought to be applied in spite of the new PRC Civil Procedure Law. In other words, it may be concluded that Article 26 of Pilot Program 2020 fails to cut a way through the whole legislation process and find a proper place in the new statute, while the same rule is still effective before courts. For other dispute resolution mechanisms, the aforementioned distinction between

presumed service and de facto notification could show the right way to inform the party to be served. In any case, the issue of service is always sensitive which is an essential ingredient for a due process and a fair play. In China, the issue of service shows especially a long-lasting problem in civil justice.⁸⁶

IV. NEW TECHNOLOGIES FOR ODR

A. Technologies and Neutrality of the Court

Electronic technologies, whether in service to courts or in other uses, raise concerns about data protection, security protocols, and necessary software and equipment⁸⁷ with respect to protecting proceedings after successful cyberattacks. As both practicing lawyers and even judges do not yet have the substantive experience to such problems, they must rely on technological developments by, for example, the creative efforts of big Internet service providers. The principle of due process in electronic court proceedings calls for incorporating practical IT expert advice to make judicial business more custom-friendly and efficient. Lawyers themselves are not good at antivirus software for cybersecurity needs, which is, of course, insufficient protection. Specialized IT engineers are required to keep the electronic environment clean and healthy.

Ironically, however, in regard to the interactions between lawyers and IT experts, there could be some challenges to the neutrality of the court. Since the IT experts have electronic technologies, they may be taking control of many legal and judicial activities. In this case, lawyers are losing their professional territory. Also, if the engineers are not only assisting the judges but getting involved in disputes themselves, the relationships become complicated. A noticeable example of such complications is the correlation between the Hangzhou Internet Court and the e-commerce giant Alibaba, which is located just within this court's jurisdiction.⁸⁸ Concerns will arise if the court takes a case relating to Alibaba while at the same time using Alibaba's customized Internet service. Because local protectionism has frequently been disputed in Chinese law,⁸⁹ even if local courts no longer rely on local governments financially, which actively support large local companies to demonstrate their progress in governance, outside observers continue to question the connection between courts and giant companies. Based on prima facie

evidence in the judicial statistics, many citizens and even lawyers believe that some large Internet-based company in southeastern China can hardly lose a case if the local court has competence with territorial jurisdiction over the company. Despite the lack of empirical data, we could still keep eyes on the development of this observation in the future.

B. Electronic Evidence and Special Legal Regimes

New technologies have given rise to the new types and forms of evidence because intangible evidence, such as electronic evidence, could be a factual basis for any kind of adjudication under the framework of ODR. This kind of evidence requires new policies to address concerns. For instance, electronic contracts do not leave a trail of written documentation, but only electronically stored data which consist of the consensus between business partners. If such data is verified, the function of written contracts could still be fulfilled entirely.

To address this matter, Article 63, paragraph 1 (5) of the PRC Civil Procedure Law of 2012 began recognizing electronic data as a type of civil evidence, and Article 66, paragraph 1 (5) of the current PRC Civil Procedure Law keeps it untouched. Also, Article 14 of the Some Provisions on Evidence in Civil Procedures (hereinafter Provisions Evidence 2019)⁹⁰ designates the following as admissible electronic data: information released online such as by webpages or blogs; communication through network application services such as short text messages, emails, instant messaging, and chat groups; user registration or identity authentication data, electronic transaction records, communication records, login logs, and other information; and electronic documents, pictures, audio recordings, video recordings, digital certificates, and computer programs. Then, in a broader sense, Article 14 states in its fifth and last item that the scope of admissible electronic data extends to cover information stored, processed, and transmitted in digital form which can prove the facts of the case. It is then up to the judicial practice to develop which kinds of electronic data could be taken as evidence before courts. This extension facilitates ODR proceedings since arbitration or mediation proceedings could regard this rules as model rules. Following these rules, special evidential examination and evaluation requirements were introduced by the Provisions Evidence 2019, as well.⁹¹

Compared with the traditional approach to evidential production, furthermore,

the essential evidence of a case being heard online has to be submitted differently. It means that electronic evidence could be an alternative form of other kinds of evidence such as documentary evidence or expert opinions. Because electronically submitted material is generally not in its original form, there can be doubts about admissibility.⁹² Article 22 of Pilot Program 2020 stipulates that electronically submitted litigation and evidential materials submitted by the parties can be used directly in the litigation. In this case, paper originals are not required. However, if courts require original documents for any reason, such as requested by either party or needed by the case itself, these must be provided. Article 10 of Provisions Internet Courts 2018 states that documents related to personal identification or duplicate business licenses, authorization letters, identification of legal representatives and other litigation materials, documentary evidence, judicial expert opinions, inspection records, and other evidentiary materials that are submitted and processed electronically are deemed to meet the formal requirements for originals after the courts have examined the materials. If an opposing party raises any objection to the authenticity of any such materials and has reasonable grounds, the Internet court will, according to Article 10 of Provisions Internet Courts 2018, require the party submitting the related evidence to provide the originals.⁹³ These provisions allow for electronically submitted evidence to be interpreted and regulated in accordance with the general theory of evidence law, which has been traditionally prepared for physical evidence. Yet, it attracts our attention that there could be some cases where it is not suitable to substitute physical evidence with electronic evidence. For instance, it happens when there are numerous physical evidence or evidence which is highly disputed.

According to the SPC's special report, the Chinese judiciary aims at innovating the online preservation and authentication of e-evidence. Blockchain technology in combination with big data and cloud storage is used in the judicial process. As of October 31, 2019, courts in 22 provinces (municipalities) had interconnected with national e-evidence platforms underpinned by blockchain, which is widely linked to 27 sites, including the National Time Service Center. It has finally diversified dispute resolution platforms, notary offices, and forensic sciences centers. About 194 million pieces of e-evidence have been preserved on the platform, supporting evidence authentication and examination in future hearings. In this aspect, all three Internet courts have mapped out their own exploratory plan in detail.⁹⁴ For

the purpose of this contribution, not only the regulated types of electronic data but also the rules on electronic submission of evidences could be comparable in both the area of commercial arbitration and different forms of mediation.

C. Impact of Artificial Intelligence Systems on Civil Proceedings

Lastly, the potential use of artificial intelligence (AI) systems in China, as opposed to other jurisdictions,⁹⁵ is a very popular research topic.⁹⁶ Under the SPC's current reform plan for 2019-23, the courts are to develop intelligent case assistant systems and improve the functionality of similar case references, outcome comparisons, data analyses, and warnings against adjudication defects.⁹⁷ This process will call for deploying AI systems in adjudication. Current AI applications in courtrooms, virtual or offline, include synchronous, real-time voice transcription, and intelligent voice cloud platforms. However, these general examples do not fully reflect usages of specialized legal AI technology that most lawyers are looking for in civil proceedings.

In practice, computer programs and websites can provide preliminary answers to legal questions. Beyond private service providers, Shanghai courts responded to nearly 10,000 frequently asked procedural questions that had accumulated over the years by producing FabaoZhicha [法宝智查], a Q&A database that contains 2,300 prepared answers.⁹⁸ The site provides multiple resources and links such as official websites, litigation service bots, and WeChat official accounts to satisfy parties' diverse needs in civil proceedings.⁹⁹ Other courts could provide these services as well. For instance, the Online Diversified Dispute Resolution Platform operated by the High People's Court in Zhejiang Province is also accessible on the Internet at no cost.¹⁰⁰ Also, different courts have litigation risk assessment systems and terminals in their Litigation Service Centers.¹⁰¹ Following Article 21 of Opinions of the SPC on Building One-stop Diversified Dispute Resolution Mechanisms and One-stop Litigant Service Centers,¹⁰² the SPC intends to place intelligent equipment such as all-in-one computers for facilitative services in courts' litigation service halls. Also, the SPC plans to improve the 12368 litigation service telephone hotline with improved intelligent answering.

However, it is considered that the current e-technology is too elementary to be regarded as AI technology that will radically change the understandings and behaviors of the legal community.¹⁰³ AI is not a webpage of fixed answers to

specific legal questions. In addition, even AI-facilitated judgments are still to a great extent made by human judges as usual, AI-generated solutions have no substantial impact on judges' decisions, but they are merely references. Even if judges obtain suggestions from their colleagues, the opinions of attorneys, or textbooks, AI is not substituting human adjudicators.¹⁰⁴ Although big data can provide insights over traditional legal methods, the author would suggest that two major preconditions are required for successful deep learning to predict judgments: (1) the data should be collected and coded properly;¹⁰⁵ and (2) the real elements that determine case results can be disclosed in most final judgments. It is difficult to say that China's judiciary today is meeting these two preconditions. Accordingly, invoking AI systems in the court remains in the future. While these two preconditions would be met later, then we may encounter the well-known saying of John von Neumann while trying to solve the problem of complexity: "with four parameters I can fit an elephant, and with five I can make him wiggle his trunk."¹⁰⁶ A complex model may fit the collected data with abundant parameters, whereas using this model to predict the future is another thing.

V. CONCLUSION

ODR is a globally attractive option. However, it does not self-evidently mean an advanced stage in the trajectory of dispute resolution. ODR is not only one of the different forms for resolving disputes, but it should contain substantial legal rules and institutions. On one hand, ODR strongly connects to other dispute resolution mechanisms. If traditional dispute resolution output is of low quality in one jurisdiction, the respective online output is unlikely to be high. To a great extent, ODR could be a mirror for the performance of traditional dispute resolution like court service within a physical courtroom or other mediation, arbitration or mixed choices. The Internet-based characteristic of ODR means merely a different environment for dispute resolution. Whether ODR is managed successfully or not, depends on the general understanding and operation of dispute resolution. On the other hand, the notion of ODR itself consists of various forms or models. The current pandemic gives rise to the very strong need for online alternatives, while China is among the leading jurisdictions which are in support of Internet-based

experiments. The Chinese experience could show both a localized possibility of having ODR and a prospective future for the whole world.

With this respect, this contribution intends to introduce the ODR mechanism in China and discuss the principle of due process as well as the impact of technologies. It is first necessary to seriously consider the rapid development of ODR in China. The application of ODR in commercial arbitration, facilitated mediation, e-commerce systems and Peoples' Courts should be taken into account. Among these possibilities, the new technologies including AI and electronic evidence are the key ingredients for a successful ODR system in China. It is noted that electronic evidence could form the basis of fact-finding for any ODR's possibilities. While AI systems are popular in China, until now they have not fully represented specialized legal AI technology. It means the Chinese lawyers are still looking forward to advanced AI systems for forthcoming dispute resolution attempts.

Meanwhile, although not very fascinating, the settled procedural principles regarding due process and neutrality should still be the primary task of civil justice and ADR. Keeping the advantages of the one-stop dispute resolution mechanism in mind, it deserves worries and doubts whether the fundamental right of claim could be safeguarded even if the pre-action mediation is promoted severely. Considering the convenience of dispute resolution which is given rise to by one-stop mechanism, this chance to be mediated should never substitute the parties' day in court. Taking the so-called Internet-based advance arbitral awards as a vivid illustration, the importance of these procedural principles is to be developed. The requirement for service and notice in civil proceedings is to be and has also been fulfilled under Chinese law. Yet, while relying on the IT experts who have the expertise in electronic technologies, the dispute resolution facilities such as courts are always supposed to be aware of the risks of losing neutrality, especially when it comes to the disputes relating to the IT experts and IT companies.

Lastly, these conclusions could be limited to developing countries such as China that are approaching a steady implementation of the rule of law. Nevertheless, the conclusion could also be overarching that can be generalized more broadly for various jurisdictions.

Received: Dec. 15, 2021

Modified: Jan. 15, 2022

Accepted: Feb. 15, 2022

REFERENCES

1. United Nations Commission on International Trade Law, Online Dispute Resolution: On-line Resources, https://uncitral.un.org/en/library/online_resources/online_dispute_resolution.
2. For details on the situation of ten years ago, see ELECTRONIC TECHNOLOGY AND CIVIL PROCEDURE: NEW PATHS TO JUSTICE FROM AROUND THE WORLD (Miklós Kengyel & Zoltán Nemessányi eds., 2012); MOBILE TECHNOLOGIES FOR CONFLICT MANAGEMENT: ONLINE DISPUTE RESOLUTION, GOVERNANCE, PARTICIPATION (Marta Poblet ed., 2011); Brian Pappas, *Online Court: Online Dispute Resolution and the Future of Small Claims*, 12 UCLA J. L. & TECH. 2 (2008).
3. Dorcas Q. Anderson, *The Convergence of ADR and ODR within the Courts: The Impact on Access to Justice*, 38(1) CIVIL JUSTICE Q. 126 (2019), https://ink.library.smu.edu.sg/sol_research/2842.
4. *Id.* at 132-43.
5. Michael Legg, *The Future of Dispute Resolution: Online ADR and Online Courts*, 27 AUSTL. DISP. RESOL. J. 227 (2016).
6. CIVIL COURTS COPING WITH COVID-19 (Bart Krans & Anna Nylund eds., 2021).
7. Florian Scholz-Berger & Julius Schumann, *Die Videokonferenz als Krisenlösung für das Zivilverfahren*, 6 ECOLEX 469 (2020).
8. Anne Sanders, *Videoverhandlungen in Europa und die Covid-19-Pandemie*, DRiZ 69 (2021).
9. Ralf Köbler, *Homeoffice hat bei den Gerichten Grenzen*, DRiZ 52 (2021).
10. For details on the discussion in Germany, see Christian auf der Heiden, *Prozessrecht in Zeiten der Corona-Pandemie*, NJW 1023 (2020).
11. Weixia Gu, *Looking at Arbitration through a Comparative Lens: General Principles and Specific Issues*, 13(2) J. COMP. L. 165-9 (2018).
12. The School of International Arbitration of Queen Mary University of London & White & Case LLP, 2021 International Arbitration Survey: Adapting Arbitration to a Changing World (May 6, 2021), at 21, <http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2021-International-Arbitration-Survey-Adapting-arbitration-to-a-changing-world.pdf>.
13. See generally RICHARD SUSSKIND, ONLINE COURTS AND THE FUTURE OF JUSTICE (2019).

14. CIETAC, CIETAC Online Arbitration, <http://www.cietacodr.org>.
15. CIETAC, CIETAC Online Dispute Resolution Center, <http://odr.org.cn>.
16. *Id.*
17. CIETAC, China International Economic and Trade Arbitration Commission Guidelines on Proceeding with Arbitration Actively and Properly during the COVID-19 Pandemic (Trial) [中国国际经济贸易仲裁委员会关于新冠肺炎疫情期间积极稳妥推进仲裁程序指引(试行)] (Apr. 28, 2020), <http://www.cietac.org.cn/index.php?m=Article&a=show&id=16910>.
18. Guidelines art. 2.1.
19. *Id.* art. 2.2.
20. *Id.* art. 2.6.
21. CIETAC, Intelligent Hearing Platform of China International Economic and Trade Arbitration Commission (June 3, 2021), <https://kt.cietac.org/portal/main/domain/index.htm>.
22. Antonio Cabral, *Designing Procedure by Contract: Litigation Agreements in Contemporary Civil Procedure*, 9(2) INT'L J. PROCEDURAL L. 364-5 (2019).
23. For details on the framework of dispute resolution mechanisms, see CARRIE J. MENKEL-MEADOW, LELA PORTER LOVE, ANDREA KUPFER SCHNEIDER & MICHAEL MOFFITT, DISPUTE RESOLUTION: BEYOND THE ADVERSARIAL MODEL 425-74 (2019); Thomas Stipanowich & Veronique Fraser, *The International Task Force on Mixed Mode Dispute Resolution: Exploring the Interplay between Mediation, Evaluation and Arbitration in Commercial Cases*, 40 FORDHAM INT'L L. J. 839 (2017).
24. For a comprehensive observation, WEIXIA GU, DISPUTE RESOLUTION IN CHINA: LITIGATION, ARBITRATION, MEDIATION, AND THEIR INTERACTIONS 157-87 (2021).
25. SPC, Interpretation No. 23 [2021].
26. SPC, CHINESE COURTS AND INTERNET JUDICIARY 66-7 (2019).
27. *Id.* at 67.
28. First Intermediate People's Court in Hainan Province and Hainan High People's Court, Foreign-related civil and commercial cases Online Dispute Resolution Platform [涉外民商事法庭案件多元化解平台], <https://hnodr.odrcloud.cn>.
29. Han Xiao & Runjiao Ma, The First One Nationwide! The Diversified Dispute Resolution Platform for Foreign-related Civil and Commercial Matters in Hainan Province Starts Now [全国首创! 海南涉外民商事纠纷在线多元化解平台上线运行] (Dec. 6, 2019), http://www.chinapeace.gov.cn/chinapeace/c53724/2019-12/10/content_12308330.shtml.
30. Changbo Jin, The "Trinity" Diversified Dispute Resolution Mechanism for International Commercial Disputes in Hainan Province [海南实行国际商事纠纷“三位一体”多元化解机制] (Oct. 18, 2021), <https://www.hainan.gov.cn/hainan/5309/202110/c7e9e25a92e9424bafla156448891bc2.shtml>.
31. For details on this platform, see David Holloway, *The New Chinese International Commercial Court and the Future of Dispute Resolution in the Belt and Road Initiative*,

- in* DISPUTE RESOLUTION IN CHINA, EUROPE AND WORLD 51-80 (Lei Chen & André Janssen eds., 2020).
32. On the legal harmonization in the context of commercial arbitration under the Belt and Road Initiative, *see* Weixia Gu, *China's Belt and Road Development and A New International Commercial Arbitration Initiative in Asia*, 51 *VAND. J. TRANSNAT'L L.* 1305 (2018).
 33. Fei Long, *Innovation and Development of the China International Commercial Court*, 8 *CHINESE J. COMP. L.* 42-3 (2020).
 34. *See* General Office of the Central Committee of the Communist Party of China and the General Office of the Chinese State Council Have Printed and Distributed the Opinion Concerning the Establishment of the Belt and Road International Commercial Dispute Resolution Mechanism and Institutions [中共中央办公厅、国务院办公厅印发《关于建立“一带一路”国际商事争端解决机制和机构的意见》], *XINHUANET*, June 27, 2018, http://www.gov.cn/zhengce/2018-06/27/content_5301657.htm.
 35. Notice of the General Office of the SPC on Determining the First Group of International Commercial Arbitration and Mediation Institutions Included in the “One-Stop” Diversified Mechanisms for Resolving International Commercial Disputes [最高人民法院办公厅关于确定首批纳入“一站式”国际商事纠纷多元化解决机制的国际商事仲裁及调解机构的通知], Document No. 212 [2018] of the General Office of the SPC.
 36. *Id.*
 37. Xiangzhuang Sun, *A Chinese Approach to International Commercial Dispute Resolution: The China International Commercial Court*, 8 *CHINESE J. COMP. L.* 49-50 (2020).
 38. SCMC, Overview of the SCMC, SCMC, http://www.scmc.org.cn/page67?article_id=196&_l=en&menu_id=86.
 39. BCI & BIMC, Introduction to Our Mediation Business [调解业务介绍], <http://www.bcsz.org/html/tjywjs>.
 40. BCI & BIMC, Introduction, <http://www.bcsz.org/html/ywtj>.
 41. *Id.*
 42. CIETAC, Fee Schedule [费用表], <http://www.cietac.org/index.php?m=Article&a=show&id=2747>.
 43. Henry H. Perritt, *Dispute Resolution in Cyberspace*, 15 *OHIO ST. J. DISP. RESOL.* 675 (2000).
 44. *See generally* AMY SCHMITZ & COLIN RULE, *THE NEW HANDSHAKE: ONLINE DISPUTE RESOLUTION AND THE FUTURE OF CONSUMER PROTECTION* (2017).
 45. JD, Disputes out of Third-party Transactions [第三方交易纠纷], <https://help.jd.com/user/issue/list-450.html>.
 46. Taobao, General Rules on the Dispute Resolution in Taobao Platform [淘宝平台争议处理规则] (May 6, 2019), <https://rule.taobao.com/detail-99.htm?tag=self#524>. Under these general rules, there are concrete rules for different types of goods such as cellphone,

clothes, shoes, and so forth.

47. ALIBABA, ALIBABA Public Jury [大众评审], <http://pan.taobao.com>.
48. ALIBABA, Platform for Intellectual Property Protection [知识产权保护平台], <https://qinquan.taobao.com>.
49. Sina Weibo, Weibo Community Agreement [微博社区公约] (May 27, 2021), <https://service.account.weibo.com/roles/gongyue>.
50. Zhixun Cao, *Evolution of Online Courts in China: Situation and Challenges*, 11(2) INT'L J. PROCEDURAL L. 300-16 (2021); SPC, *supra* note 26, at 60-1 (various experiments). For details on the current reform plan, *see* SPC, GUIDELINES OF THE SUPREME PEOPLE'S COURT ON DEEPEN THE JUDICIAL SYSTEM REFORM WITH COMPREHENSIVE INTEGRATED REFORMS OF PEOPLE'S COURTS- FRAMEWORK OF THE FIFTH FIVE-YEAR JUDICIAL REFORM FOR PEOPLE'S COURTS (2019-2023) [最高人民法院关于深化执行改革健全解决执行难长效机制的意见-人民法院执行工作纲要(2019-2023)] (2019).
51. Fuhua Wang, *A Brief Note on the Application of Information and Communication Technology in Civil Judicial Case Management*, in CIVIL CASE MANAGEMENT IN THE TWENTY-FIRST CENTURY: COURT STRUCTURES STILL MATTER 196 (Peter Chan & C. van Rhee eds., 2021).
52. SUSSKIND, *supra* note 13, at 95-176.
53. SPC, Interpretation No. 16 [2018].
54. *Cf.* Yulin Fu, *Civil Justice in China in the Covid-19 Period*, in Krans & Nylund, *supra* note 6, at 41.
55. Furthermore, both in December 2020 and December 2021, two more international commercial courts were established within the separate Intermediate People's Courts in individual cities, namely Suzhou and Beijing.
56. SPC, Interpretation No. 11 [2018].
57. *See* Beijing Financial Court Accomplished its First Patch of Judicial Review Cases in the Area of Financial Arbitration while Having entirely Paperless Proceedings [北京金融法院审结首批金融仲裁司法审查案件, 全程无纸化办公!], XINHUANET, Apr. 11, 2021, <https://www.chinacourt.org/article/detail/2021/04/id/5956800.shtml>.
58. SPC, Document (法) No. 11 [2020].
59. Qiang Zhou, Mid-term Report of the SPC to the Standing Committee of the National People's Congress on the Performance of Pilot Program of the Reform of Separation between Complicated Cases and Simple Ones in Civil Procedure [最高人民法院关于民事诉讼程序繁简分流改革试点情况的中期报告], National People's Congress of PRC (Feb. 28, 2021), <http://www.npc.gov.cn/npc/c30834/202102/7232c144bd824d3d8348e4558cceb02.shtml>.
60. SPC, Interpretation No. 12 [2021].
61. Decision of the Standing Committee of the National People's Congress to Amend the Civil Procedure Law of the People's Republic of China (PRC) [全国人民代表大会常务

- 委员会关于修改《中华人民共和国民事诉讼法》的决定], adopted at the 32nd Session of the Standing Committee of the Thirteenth National People's Congress on December 24, 2021.
62. Frank Sander, Varieties of Dispute Resolution, Address Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice (Apr. 7-9, 1976), in 70 F.R.D.79 at 111 (1976).
 63. Shirley Shipman, *Compulsory Mediation: The Elephant in the Room*, 30(2) CIVIL JUSTICE Q. 163 (2011).
 64. For details on the impact of mediation's result on the civil justice, see Annie de Roo & Rob Jagtenberg, 'Shadow of the Law' or 'Shadow of the Settlement': Experiences with the Dutch Act on Collective Settlement of Mass Damage (WCAM), in TRANSFORMATION OF CIVIL JUSTICE 249-63 (Alan Uzelac & C. H. van Rhee eds., 2018).
 65. Robert Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 YALE L. J. 950 (1979).
 66. MARTIN SHAPIRO, COURTS: A COMPARATIVE AND POLITICAL ANALYSIS 8-17 (1986).
 67. STEPHEN YEAZELL & JOANNA SCHWARTZ, CIVIL PROCEDURE 703-73 (10th ed. 2019). See generally JACOB B. VAN DE VELDEN, FINALITY IN LITIGATION (2017).
 68. SPC, Interpretation No. 10 [2018].
 69. For details, see Qiyu Guo, *On the "Advance Arbitration" in Internet-based Lending Disputes* [网络借贷纠纷中的“先予仲裁”问题研究], 7 FDU L. REV. [复旦大学法律评论] 146 (2020).
 70. SPC, Interpretation No. 10 [2018].
 71. On the requirements before the commencement of enforcement proceedings in China, see Zhixun Cao, *Civil Enforcement Rules and Mechanism in China: The Past, Present and the Future*, 9 PEKING U. L. J. 30-2 (2021), <https://doi.org/10.1080/20517483.2021.1978677>.
 72. SPC, Interpretation No. 10 [2018].
 73. Zhixun Cao, *On the Civil Enforcement Organ in China*, 4 CHINA LEGAL SCI. 106 (2021).
 74. NEIL ANDREWS, ANDREWS ON CIVIL PROCESSES. COURT PROCEEDINGS, ARBITRATION & MEDIATION 735-6 (2019). See also OSCAR CHASE ET AL., CIVIL LITIGATION IN COMPARATIVE CONTEXT 234-51 (2d ed. 2017).
 75. See generally EUROPEAN LAW INSTITUTE & UNIDROIT, ELI/UNIDROIT MODEL EUROPEAN RULES OF CIVIL PROCEDURE (2021).
 76. YEAZELL & SCHWARTZ, *supra* note 67, at 172-6.
 77. SPC, Interpretation No. 5 [2015].
 78. SPC, Document [法发] No. 21 [2016].
 79. Qiang Zhou, Annual Working Report of the SPC of 2016 [2016年最高人民法院工作报告], SPC (Feb. 28, 2018), <http://www.court.gov.cn/zixun-xiangqing-82592.html>.
 80. SPC, Service Platform for People's Courts [人民法院送达平台], <http://songda.court.gov.cn>.

81. Wang, *supra* note 51.
82. These circumstances are provided as followed. First, the person being served must give express consent. Second, the person being served must agree that electronic service applies to the litigation. Third, the person being served must voluntarily provide an electronic address for service in its complaint or answer filed. Fourth, the person being served accepts the completed electronic service by returning a receipt, participating in the litigation, and other means and by not expressly disagreeing with electronic service. Article 29 of the Online Litigation Rules accepts the substantially same rules, as well.
83. Yulin Fu, *Autonomous Options of Procedural Issues upon the Litigants' Consent in the New Civil Procedure Law* [新民事诉讼法中的程序性合意机制], 5 J. COMP. L. [比较法研究] 55 (2012); Weiping Zhang, *On Contractualisation of Civil Litigation: Improving the Fundamental Framework of Chinese Civil Procedure Law* [论民事诉讼的契约化: 完善我国民事诉讼法的基本作业], 3 CHINA LEGAL SCI. [中国法学] 73 (2004).
84. Article 26, paragraph 2 of Pilot Program 2020 clarifies the circumstance as followed. On one hand, if the person being served acknowledges having received the served materials or performs a corresponding litigant act according to the served content, the service is considered to have been completed effectively. On the other hand, if the email platform of the person being served indicates that a message was read or there is other evidence of notice by the person being served, service is presumed to be completed effectively. However, such presumption could be rebutted, if the person being served could prove that it did not receive the served content. For instance, the person being served could prove that a system error exists; that this person does not use the address for service; or that another person rather than the person being served read the message and so forth.
85. For details on the difficulty in current practice, see Hongfei Zhou, *Innovation and Analysis of the Electronic Service System under the Background of "Internet +"* ["互联网+" 背景下电子送达制度的革新与探析], 1 J. HENAN U. ECON. & L. [河南财经政法大学学报] 149 (2022).
86. Hangping Chen, "Vulgar Delivery": *A Sample of Penetrating into the Defects of Chinese Civil Judicature* ["粗疏送达": 透视中国民事司法缺陷的一个样本], 6 L. & SOCIAL DEV. [法制与社会发展] 40 (2016).
87. Yet, it is reported that in international arbitration proceedings, the consideration given to cybersecurity could be different depending on the nature of the dispute and the interests and identity of the parties. See The School of International Arbitration of Queen Mary University of London & White & Case LLP, *supra* note 12, at 31-2.
88. Meirong Guo, *Internet Court's Challenges and Future in China*, 40 COMPUTER L. & SECURITY REV. 8-9 (2021).
89. Xin He, *A Tale of Two Chinese Courts: Economic Development and Contract Enforcement*, 39 J. L. & SOC'Y 397-9 (2012). See also Donald Clarke, *Power and Politics in the Chinese Court System: The Enforcement of Civil Judgments*, 10 COLUM. J. ASIAN L. 41-9 (1996).

90. SPC, Interpretation No. 19 [2019].
91. Provisions Evidence 2019, arts. 93 & 94. For details on the comparative framework for electronic evidences in Germany, see Thimo Brand & Yannick Skowronek, *Die Herausforderungen der Digitalisierung für das zivilprozessuale Beweisverfahren*, RD 178 (2021); Peter Gottwald, *Elektronische Dokumente und elektronische Signaturen im deutschen Zivilprozess*, in ON THE ISSUES OF SUBSTANTIVE AND PROCEDURAL LAW RELATING TO ELECTRONICAL DOCUMENT AND ELECTRONICAL COMMERCE [电子文书及电子商务相关实体与程序问题之研讨] 407-52 (Shiming Jiang ed., 2018); Nicola Preuß, *Der elektronische Zivilprozess-Nutzen oder Schaden*, 119 ZP 421 (2016); Peer Philip Wagner, *Das elektronische Dokument im Zivilprozess*, JuS 29 (2016); Klaus Bacher, *Der elektronische Rechtsverkehr im Zivilprozess*, NJW 2753 (2015); Helmut Rüßmann, *Electronic Documents. Security and Authenticity*, in Kengyel & Nemessányi, *supra* note 2, at 233-60.
92. It is the situation in Germany in accordance with §§ 128a II, 420 ZPO, which decline the examination of documentary evidences in a videoconference and request their physical presentation in principle. Musielak/Voit/Stadler, ZPO, 18. Aufl., 2021, § 128a Rn. 5; Christian Schupp, *Praktische Erwägungen zu Verhandlungen nach § 128a ZPO*, DRiZ 66 (2021); Johannes Schmidt & Daniel Saam, *Videokonferenzen im Zivilprozess*, DRiZ 216 (2020). Only with the additional consent of the opposing party according to § 284 S.2 ZPO, the court can collect documentary evidences differently. See MüKoZPO/Fritsche, 6. Aufl., 2020, § 128a Rn. 8, at 13.
93. Article 12, paragraph 2 of the Online Litigation Rules supplements the circumstances where the court shall require the party submitting evidence to provide the original documents or original items. Also, Article 13 of the Online Litigation Rules lists the situation where the court may determine that electronic materials meet the requirements for the forms of original documents or original items.
94. SPC, *supra* note 26, at 75-6. For details on the scheme of using blockchain technology in civil justice, see Beijing Internet Court, *Tianping Blockchain of Beijing Internet Court* [北京互联网法院天平链], <https://tpl.bjinternetcourt.gov.cn/tpl/>; Beijing Internet Court, *White Paper on Trials of Beijing Internet Court* (Oct. 14, 2019), at 20-1, <https://regional.chinadaily.com.cn/pdf/WhitepaperontrialsofBeijingInternetCourt.pdf>; Huang-Chih Sung, *Can Online Courts Promote Access to Justice? A Case Study of the Internet Courts in China*, 39 COMPUTER L. & SECURITY REV. 4-6 & 12-3 (2020).
95. For details on the discussions in Germany, see Klaus Neubert, *Der Einsatz von Künstlicher Intelligenz in der deutschen Justiz*, DRiZ 108 (2021); BENEDICT HEIL, *IT-ANWENDUNG IM ZIVILPROZESS* (2020); SUSSKIND, *supra* note 13, at 263-92.
96. Benjamin Minhao Chen & Zhiyu Li, *How Will Technology Change the Face of Chinese Justice?*, 34 COLUM. J. ASIAN L. 1 (2020).
97. SPC, *supra* note 50, at 72.

98. SPC, *supra* note 26, at 68.
99. *Id.*
100. Zhejiang High People's Court, QR Code for Dispute Resolution of Zhejiang [浙江解纷码], <https://yundr.gov.cn>.
101. Chen & Li, *supra* note 96, at 10-2.
102. SPC, No. 19 [2019].
103. A more developed example for AI judging, see Masha Medvedeva et al., *JURI SAYS: An Automatic Judgement Prediction System for the European Court of Human Rights*, in *LEGAL KNOWLEDGE AND INFORMATION SYSTEMS 277-80* (Serena Villata, Jakub Harašta & Petr Křemen eds., 2020).
104. For details on similar scepticism in the area of international commercial arbitration, see The School of International Arbitration of Queen Mary University of London & White & Case LLP, *supra* note 12, at 22.
105. For details on similar consideration in German discussion, see Neubert, *supra* note 95, at 111.
106. Jürgen Mayer, Khaled Khairy & Jonathon Howard, *Drawing an Elephant with Four Complex Parameters*, 78(6) *AM. J. PHYSICS* 648 (2010), <https://doi.org/10.1119/1.3254017>.

