



Guiding Cases *Seminars*TM
指导性案例 **研讨会**TM

SEMINAR SUMMARY

CHINA'S GUIDING CASES AND U.S. PRECEDENTS

SPECIAL EVENT IN COLLABORATION WITH THE INTERNATIONAL LAW INSTITUTE

STANFORD LAW SCHOOL

JULY 31, 2017*

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Guiding Cases *Seminars*TM feature talks on Guiding Case-related topics with scholars, lawyers, policymakers, and other experts at venues around the world, disseminated in video and text summary to the global audience of the China Guiding Cases Project.



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Guiding Cases *Seminar*[™]

I. Overview

On July 31, 2017, the China Guiding Cases Project (“CGCP”; <http://cgc.law.stanford.edu>) held a Guiding Cases *Seminar*[™] titled *China’s Guiding Cases and U.S. Precedents* at Stanford Law School. This event was organized in collaboration with the International Law Institute as part of a training program on judicial responsibility systems for 22 delegates from China Law Society (see Appendix B). The seminar featured presentations by **Dr. Mei Gechlik**, founder and director of the CGCP, and **Mr. Peter Su**, a partner in the Palo Alto office of Dentons U.S. LLP who specializes in cross-border litigation, corporation transactions, and intellectual property. The respective talks they presented were “China’s Guiding Cases and Their Importance to the Belt and Road Initiative” and “Significance of China Cases in Cross-Border Disputes in U.S. Litigation”. Other participants included **Ms. LIN Jie**, (Advisor to the CGCP; Chairperson and Head of Government Relations at Akamai Technologies), **Ms. Helen Su** (Advisor to the CGCP; Partner at Alston & Bird LLP), **Mr. Qianwu Yang** (Senior Partner at Dentons Law Firm (Shenzhen)), and several CGCP members.

The CGCP thanks the sponsors of this event, including Stanford University’s Center for East Asian Studies, Alston & Bird LLP, Broad & Bright, and the Fu Tak Iam Foundation Limited for their kind and generous support. The CGCP also thanks **Mr. Robert Sargin**, Deputy Director of the International Law Institute, and **Mr. WANG Wei**, Head of the Chinese delegation and Deputy Director-General of China Legal Exchange Center of China Law Society, for helping us making this event a great success.

II. Opening Remarks; China’s Guiding Cases and Their Importance to the Belt and Road Initiative

Mr. Robert Sargin and **Mr. WANG Wei** delivered opening remarks and introduced the Chinese delegation, which was composed of 22 judges and legal scholars from 15 provinces and municipalities in China. Mr. Sargin spoke of the long-running cooperation between the Chinese legal community and the International Law Institute.

At the conclusion of the opening remarks and each participant’s brief self-introduction, **Dr. Mei Gechlik** spoke on the evolving use of Guiding Cases (“GCs”) and their importance to the Belt and Road Initiative (“BRI”). She began her talk by highlighting two sets of important rules released by the Supreme People’s Court (“SPC”) in 2010¹ and 2015² and the court’s selection of

¹ 《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*), 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>.

² 《〈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”*), passed by the Adjudication



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87 GCs covering various areas of law.³ Dr. Gechlik noted that the CGCP had found, through the end of 2016, 519 subsequent cases that explicitly mention GCs (“SCs”), compared with 181 SCs identified through the end of 2015. Based on empirical analyses, she then explained how lawyers and judges use GCs in practice.

Dr. Gechlik proceeded to explain the rapid development of the BRI since the idea was introduced by China’s President Xi Jinping in late 2013 while visiting Kazakhstan. Concerns about the legal risks involved in BRI projects have also been growing. In an attempt to address these concerns, the SPC released 18 “Typical Cases” (“TCs”) related to the initiative, eight in 2015 and another ten in May 2017; the CGCP publishes these as B&R *Cases*TM.⁴ The TCs show how Chinese courts have successfully resolved disputes involving not only parties from Belt and Road countries but also different areas of law, including international law. As these TCs show sensitive and relatively sensible judicial treatment of cases with wide-reaching importance, Dr. Gechlik suggested that at least some of them be re-issued as GCs because they would thus benefit from additional exposition by the SPC and be invested with *de facto* binding force.

The competence Chinese courts show in handling disputes involving international law and foreign parties from the Belt and Road countries should help instill more confidence in countries participating in the BRI such that they will become more willing to reach related legal cooperation agreements with China. According to a database developed by the CGCP,⁵ of the more than 100 cooperation agreements signed between China and Belt and Road countries, one-third concern legal cooperation and two-thirds focus on investment. Once legal cooperation agreements are proven to be useful tools for protecting investors’ rights in Belt and Road countries where the national law is evolving or unfavorable, more agreements of this type covering various areas, such as evidential rules and recognition of arbitral awards, will likely emerge to facilitate the development of the BRI.

III. Significance of China Cases in Cross-Border Disputes in U.S. Litigation

Following Dr. Gechlik, **Mr. Peter Su** discussed the significance of China’s court cases for cross-border disputes in U.S. litigation and the importance of the CGCP in elucidating litigation between U.S. and Chinese companies. As the largest law firm in China, with offices in more than

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>.

³ See Mei Gechlik, *China’s Guiding Cases System: Review and Recommendations*, STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, Guiding Cases *Analytics*TM, Issue No. 5, August 2016, <http://cgc.law.stanford.edu/guiding-cases-analytics>.

⁴ The CGCP produces high-quality English translations of these cases as B&R *Cases*TM and posts them on its online knowledge-base, at <https://cgc.law.stanford.edu/belt-and-road/b-and-r-cases>.

⁵ The CGCP compiles and publishes these agreements as B&R *Texts*TM on its online knowledge-base, at <https://cgc.law.stanford.edu/belt-and-road/b-and-r-texts>.



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50 cities in the country, and the largest global law firm, Dentons is keen to collaborate with the CGCP in shaping China's national law and a variety of legal issues that have arisen from the BRI.

Mr. Su provided examples for the topics of cross-border contracts, the Hague Service Convention, and intellectual property. Mr. Su explained that when a dispute arises involving cross-border contracts entered into between a U.S. company and a Chinese company, the litigation often takes place in the United States due to choice of law and choice of forum provisions. In situations where the Chinese entity has no operations in the United States, the material differences between contract law in the chosen U.S. state during litigation and contract law in China during enforcement may create inconsistencies in the ultimate outcome. The issues could be more acute for commercial contracts that contain onerous terms for the Chinese entities, which may be subject to different treatment under U.S. and Chinese laws.

Successful service of a complaint by a U.S. company on a Chinese company through the Hague Service Convention is another situation in which Chinese law can be significant in connection with U.S. law. Mr. Su explained that a plaintiff in the U.S. can effect service of process on a Chinese company in China through the regular channel of the Hague Service Convention. However, delays can occur as the service goes through review by China's Ministry of Justice, the SPC, and the local basic people's court. The plaintiff may grow impatient with this method of service and seek an alternate method of service, which is permitted under the Hague Service Convention if the impacted member countries do not object. U.S. law permits alternative methods of service but China has objected to them.

Mr. Su also presented three patent scenarios illustrating the differences between U.S. and Chinese patent laws pertaining to (i) determining the scope of patent claims as highlighted in Guiding Case No. 55,⁶ (ii) the time limitation for bringing a patent infringement suit as described in Guiding Case No. 20,⁷ and (iii) the contrast in treatment of patentable subject matters between 35 U.S.C. § 101 and the Revised Guidelines for Patent Examination, Part II, Chapter 1. These material differences in patent laws between the two countries will become more prominent issues considering that President Xi pledged, at a meeting with other Chinese leaders, to "increase

⁶ 《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》 (*BAI Wanqing v. Chengdu Hard-To-Find Items Marketing Services Center et al., A Utility Model Patent Infringement Dispute*), STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Case (EGC55), Oct. 28, 2016 Edition, <http://cgc.law.stanford.edu/guiding-cases/guiding-case-55>.

⁷ 《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》 (*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*), STANFORD LAW SCHOOL CHINA GUIDING CASES PROJECT, English Guiding Case (EGC20), Feb. 4, 2014 Edition, <http://cgc.law.stanford.edu/guiding-cases/guiding-case-20>.



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[China's] efforts in punishing unlawful acts of infringing intellectual property so as to make infringers pay a heavy price."⁸

IV. Comments and Q&A

Following the speakers' remarks, the participants were invited to pose questions to the speakers and/or share their comments about their topics and the CGCP's work.

A participant commented that the number of subsequent cases citing GCs remains relatively small in some local courts. He posited that some underlying reasons for this are that current rules do not strictly require judges to cite GCs in judgments and that the high caseload of three-to-four hundred cases per year per judge may discourage judges from providing detailed reasons and from referring to GCs in their decisions.

Another participant asked about the application, in future disputes, of decisions arising from litigation related to the BRI. Dr. Gechlik predicted that while future disputes arising from the initiative may be largely resolved through alternative dispute resolution mechanisms, such as mediation and arbitration, GCs could nonetheless contribute to the resolution of such disputes by establishing a "case base" which could serve to guide these alternative dispute resolution processes.

A question was posed to Dr. Gechlik asking for her opinion on how best to expand the influence and application of GCs in Chinese jurisprudence. Dr. Gechlik responded that this would most effectively be accomplished by legal practitioners and scholars taking the initiative to use and cite GCs in their work. Dr. Gechlik also referred to the innovative practice of the Beijing Intellectual Property Court in establishing a "precedent" system to encourage wider application of judgments rendered by this court. She expressed her opinion that this experience would inform the implementation of GCs in the future.

Mr. YANG Qianwu pointed out that, because of the inherent vagueness in statutes, he always instructs his team to never assume interpretations of legal provisions until the application of such provisions in authoritative cases is studied. Although China does not follow the doctrine of *stare decisis*, Chinese laws, like U.S. laws, do require equal protection or, in other words, that "everyone is equal before the law". Authoritative cases, therefore, can offer a sound illustration on how laws work in the real world. Moreover, similar cases from higher-level courts are highly persuasive and GCs, being issued by the SPC, are even more so in practice. Mr. Yang used his recent experience in cross-border IPO matters to illustrate the importance of China's authoritative cases. He received requests from foreign securities authorities, such as the U.S. Securities and

⁸ 习近平：营造稳定公平透明的营商环境 加快建设开放型经济新体制 (*Xi Jinping: To Create a Stable, Fair, and Transparent Business Environment; To Speed up the Construction of an Open New Economic System*), 《新华网》(XINHUA NET), July 17, 2017, http://news.xinhuanet.com/politics/2017-07/17/c_1121333722.htm.



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Exchange Commission or the UK Listing Authority, to discuss authoritative cases in which the SPC adjudicated the legality of variable interest entities (“VIEs”).

Mr. Yang then shared his experience in using the CGCP’s website as an essential tool in his cross-border legal work. Because of the search function of the website and the CGCP’s accurate translations, he and his team regularly refer to the CGCP’s translation of relevant GCs, particularly for their cross-border transaction work, such as drafting legal opinions for IPO or M&A matters. Although he and his team work with English on a daily basis, they still feel that accurately translating cases from Chinese to English is rather “painful” and such legal matters as IPO projects demand correct choice of English legal terms. Mr. Yang concluded that he believes the CGCP’s work has helped legal professionals all around the world in China-related cross-border legal fields, and that he would, without doubt, work with the CGCP more closely to increase the application of GCs and to promote the rule of law in China.

Ms. LIN Jie shared her perspective as a senior executive of a multinational company. She stated that the CGCP is of great significance to multinational companies that have operations in China. These companies can draw from relevant GCs to take appropriate legal approaches to address business challenges encountered in China. She recalled that Dr. Gechlik’s presentation to members of the American Chamber of Commerce in Beijing was well-received, in that they felt that GCs are highly relevant to the challenges they face in China and that they can truly benefit from the CGCP’s analyses of these cases and related discussions of their implications for the BRI.

Finally, the audience asked to know more about the CGCP’s cooperation with China and about the composition of the CGCP team. Dr. Gechlik explained that the project is completely independent, but that the CGCP’s work and mission are supported by the SPC and others. Dr. Gechlik explained that the CGCP team is largely composed of lawyers and law students who volunteer their services. Two members of the CGCP team then shared their experiences with the project and related observations.

Nathan Harpainter, a lawyer who joined the CGCP approximately two years ago, described his view of the contributions made by the CGCP. He stated that in addition to helping attorneys and scholars gain a better understanding of the Guiding Cases System, the CGCP is also an excellent resource for Chinese–English legal translation. While many Chinese-language legal texts have been translated and are available online, the quality of these translations varies significantly and often lacks sufficient accuracy in conveying the meaning of the source text. The CGCP produces high quality Chinese–English legal translations that have been reviewed and edited by native-speaking English and Chinese legal professionals. Practitioners can consult these materials to help determine the precise meaning of Chinese and English legal terms they encounter. The CGCP has also recently added a search function to its website, allowing users to look up and compare specific legal terms. This will further improve the usefulness of the website and the CGCP’s work.



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Sean Webb has been working with the CGCP as a translator and editor for almost three years. He just graduated from UCLA School of Law with a J.D. degree. He believes that the CGCP is an important project for several reasons. First, it serves as a great database for scholars, professionals, and students interested in legal developments in China, particularly the role that GCs are playing in those developments. The CGCP also serves as a wonderful resource for the translation of legal terms. Second, the organization is a great opportunity for scholars, professionals, and students of different backgrounds to work together and discuss interesting legal questions that have come up as China works toward unifying the application of law, enhancing its adjudication system, and improving judicial justice. Lastly, the CGCP promotes access to information, which is vital to the promotion of open justice.

Many others in the audience would have continued sharing their thoughts, but due to time constraints, the event had to close. All parties, however, expressed their hopes of continuing their friendships and dialogues in the near future.

Appendix A: Bios of Select Speakers

Dr. Mei Gechlik

Dr. Mei Gechlik is Founder and Director of the CGCP. Formerly a tenured professor in Hong Kong, she founded the CGCP in February 2011 in response to the landmark decision of the Supreme People's Court of China to release certain Chinese court judgments as *de facto* binding GCs. With support from an international team of nearly 200 members, as well as an advisory board of approximately 50 distinguished experts, including justices from the U.S. Supreme Court and the Supreme People's Court, the CGCP has quickly become the premier source of translations and analyses of GCs (<http://cgc.law.stanford.edu>). Identified as an "expertise support group" by the United Nations Development Program, the CGCP has presented at various notable forums, including the World Bank, the Open Government Partnership Global Summit, and a U.S.-China Legal Exchange Conference led by the U.S. Department of Commerce and China's Ministry of Commerce. From 2001 to 2005, Dr. Gechlik worked for the Carnegie Endowment for International Peace, testifying before the U.S. Congress on various topics about China, and has advised the United Nations and the Chinese government on implementing rule of law programs. Dr. Gechlik received her J.S.D. from Stanford Law School and her M.B.A. in Finance from the Wharton School at the University of Pennsylvania.

Peter Su

Peter Su is a partner in the Palo Alto office of the global law firm Dentons. He is a Silicon Valley business lawyer with a global vision in advising technology, energy, and life science clients across different regions with an emphasis in Silicon Valley and China and on cross-border corporate



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transactions, commercial litigation, intellectual property litigation, and patent portfolio development. He has represented numerous leading U.S., Chinese, and European technology, energy, and life science companies and venture funds for the past 15 years, including Apple, Cisco, Varian Medical Systems, Tencent, Lenovo, Sony, SunPower, JA Solar, Sequoia Capital, Venrock, and MOFCOM.

LIN Jie

Ms. LIN Jie is Chairperson of Akamai China and a board member of the Internet Society of China. Ms. Lin served on the board of the American Chamber of Commerce in China (AmCham) for three consecutive years, from 2013 to 2015. Ms. Lin was awarded the China Economic New Leading Figures Award in 2015. Prior to joining Akamai, Ms. Lin served as Senior Vice President of BeXcom and CEO of BeXcom Taiji. Ms. Lin also worked at NCR Corporation and AT&T for over 13 years prior to her tenure at BeXcom, holding various positions in different departments, including engineering, sales, marketing, and management. Ms. Lin was credited with introducing the Open System to China's financial industry in the mid-90s. Ms. Lin graduated from Tsinghua University and received her master's degree from the University of California, San Diego.

YANG Qianwu

Yang Qianwu is Dentons' senior partner based in Shenzhen, China. His practice primarily focuses on domestic and cross-border IPO, M&A, and joint ventures. He has substantial experience in these areas and his IPO experience includes domestic China IPO and cross-border IPO for Chinese enterprises in Hong Kong, the United States, the UK, and Australia. In addition, Mr. Yang and his team have successfully represented clients issuing Forum Non Conveniens legal opinions to common law courts and also successfully represented foreign clients in re-trial cases and provincial procuratorate protest cases arising from foreign investment in China. Mr. Yang is originally from Jilin, in northeastern China. He graduated from the University of Hong Kong (LLM) and Tsinghua University (LLB). He obtained his BA degree in economics from Dongbei University of Finance and Economics.

Appendix B: List of Chinese Delegates

Head: Mr. WANG Wei, Deputy Director-General of China Legal Exchange Center

Deputy Head: Mr. HUANG Jianzhong, Vice-President and Secretary-General of Law Society of Henan Province

Secretary General: Mr. LIN Hongwu, Director of Personnel Department of China Law Society



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Members:

Mr. ZHANG Tao, Deputy Director-General of Research Department of China Law Society

Mr. YANG Jianjun, Vice-President of Law Society of Shaanxi Province

Ms. MA Yan, Deputy Director-General of Beijing Justice Bureau

Mr. LI Dong, Executive Council Member of Law Society of Guangxi

Mr. WANG Jianhua, Director of Personnel Department of the Third Branch of People's Procuratorate of Chongqing

Mr. SUN Changguo, Deputy Procurator-General of People's Procuratorate of Harbin

Mr. LI Xiaoyun, Deputy Secretary-General of Law Society of Qinghai Province

Mr. BAO Huimin, Director of Trial Administration Office of Shanghai Higher People's Court

Mr. LI Yong, Deputy Director of Civil Procuratorial Department of People's Procuratorate of Jilin Province

Mr. WANG Lei, President and Research Fellow of Xinjiang Social Sciences

Mr. GUO Zhiyuan, Dean and Professor of Law School of Anhui University

Mr. ZHOU Chang, Council Member of Law Society of Hubei Province

Mr. ZHANG Xiaoqiang, Council Member of Law Society of Gansu Province

Ms. GUO Linjia, Secretary-General of Law Society of Chengdu

Mr. ZHANG Fan, Deputy Dean, Professor of Law School of Guizhou Minzu University

Mr. LI Gang, Deputy Director of Membership Department of China Law Society

Ms. LI Lei, Deputy Director of General Affairs Office of China Law Society

Mr. PENG Qiang, Judge of Higher People's Court of Guizhou Province

Ms. GUO Lin, Interpreter of China Legal Exchange Center